

This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

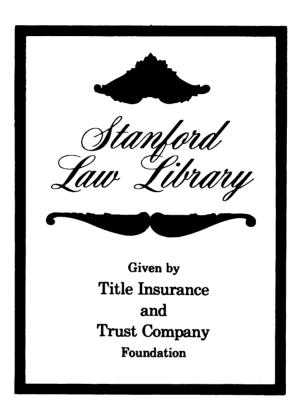
Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

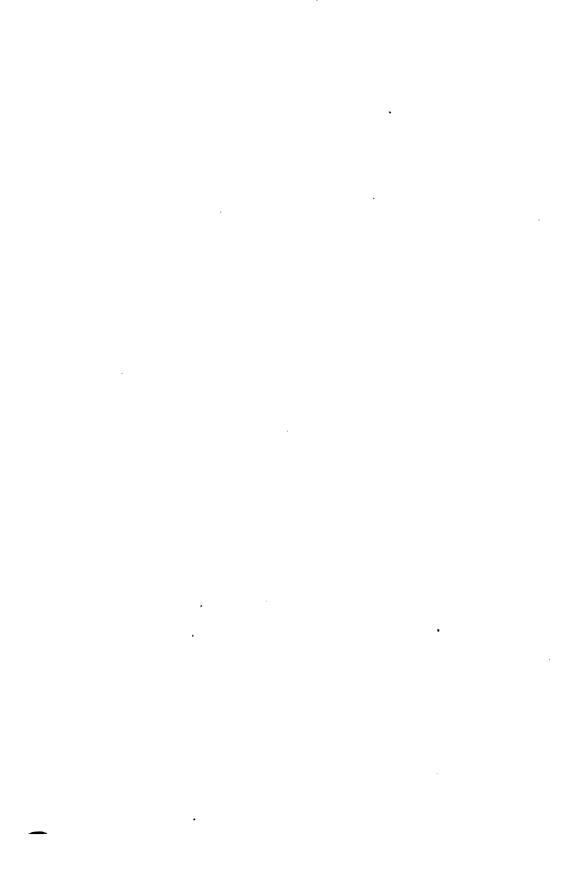
- + Make non-commercial use of the files We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + Refrain from automated querying Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + Maintain attribution The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + Keep it legal Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at http://books.google.com/



AFO QDe



J. GAY WILKINSON.
SOLICITOR.
5 & 7. DENMAN STREET.
LONDON BRIDGE, S.E.

THE LAW

OF

LANDLORD AND TENANT.

In about 13 Vols., at 27/6 net per vol.

Vols. I—VI. now ready; Vols. VII., VIII., and IX. in the Press.

- ** Vol. VII. includes LANDLORD AND TENANT. and some 700 pages are devoted to it.
 - ** Full Prospectus on Application.

ENCYCLOPÆDIA

OF

FORMS AND PRECEDENTS

BY SOME OF

The most eminent Conveyancing and Commercial Counsel,

UNDER THE GENERAL EDITORSHIP OF

ARTHUR UNDERHILL, M.A., LL.D., of Lincoln's Inn, Barrister-at-Law.

BUTTERWORTH & CO., 12, Bell Yard, Temple Bar, W.C.

A Concise Treatise

ON

THE LAW

OF

LANDLORD AND TENANT.

BY

WILLIAM MITCHELL FAWCETT,

Of Lincoln's Inn, Esq., Barrister-at-Law.

THIRD EDITION.

ВY

WILLIAM DONALDSON RAWLINS, K.C.,

Of Lincoln's Inn, M.A. and sometime Fellow of Trinity College, Cambridge.

LONDON:

BUTTERWORTH & CO., 12, Bell Yard, Temple Bar, W.C.

Law Publishers.

1905.

J. GAY WUKINSON.

SOUTOR.

5 & 7. COMMINISTREET. LONDON ERIDGE, S.E. BRADBURY, AGNEW, & CO. LD., PRINTERS, LONDON AND TONBRIDGE.

PREFACE TO THE THIRD EDITION.

Law books are like children, in that, if they live, they generally grow. So it is hoped that the increased bulk of this edition will be accepted as a normal symptom of healthy vitality.

For one considerable addition the Legislature is accountable; inasmuch as the passing of the Agricultural Holdings Act, 1900, so largely altered the law, and the procedure under the Act of 1883, as to necessitate the re-writing of that portion of the treatise which deals with statutory compensation for improvements. Further, at the suggestion of the Author, a new Section, treating of Mineral Leases and Licences, has been added to Chapter III., and the topic of public-house leases and ties has been enlarged upon. And the Editor owns to having felt and yielded to a temptation to amplify, in some measure, what had previously been said on the subject of Specific Performance.

There has, besides, been, in the course of the last three or four years, a remarkable number of reported cases on the much litigated question of the construction of tenants' covenants to pay outgoings and the like. An attempt has been made in this edition, if not to reconcile, at least to tabulate the decisions, which show that the verbose ingenuity of landlords' draftsmen has been progressively successful in throwing such burdens upon tenants. It looks, indeed, as if, in this respect—unless landlords become more altruistic, which is unlikely, or the Legislature interferes, which is more unlikely, or

intending tenants take the trouble to consider the wording of their instruments of tenancy before they sign them, which is, perhaps, the most unlikely event of the three—the tenant's lot will, in the future, be not a happy one.

Several minor alterations have been made, which it is hoped will be found to be improvements. For one thing, quotation of the actual words of material statutory provisions has in many cases been substituted for a presentation, more or less condensed, of the effect of them. It is often essential to the practitioner to see exactly what this or that section, or portion of a section, of a statute says; and, where that is so, a paraphrase may be as odious as a comparison.

A few very recent cases have had to be treated as Addenda. The most important of these new-comers is Woodall v. Clifton (reported in the Times of the 24th of November, 1904), where it was decided, in accordance with the view indicated in this book (page 164), that an option, in a ninety-nine years' lease of land, to purchase the fee simple at any time during the term is void.

The separate Index of Forms has in this edition been incorporated with the general Index, which has been revised and enlarged. Whether it has been improved it must rest with users of the book to say.

W. D. R.

 New Square, Lincoln's Inn, December, 1904.

J. GAY WILKINSON.

SOLICITOR,

5 & 7. DENMAN STREET. LONDON BRIDGE, S.E.

CONTENTS.

								P	AGE
Prffa	CE TO THE THIB	D EDIT	ION	•••	•••	•••	•••	•••	v
TABLE	OF CASES	•••	•••	•••	•••		•••	•••	ix
	OF STATUTES	•••	•••	•••	•••		•••		
ADDEN	IDA AND CORRIG	ENDA	•••	•••	• • •	•••	•••	•••	cxii
		OT	IAPTE	י חי					
		CF	IAPIT	K 1.					
[No	TE.— <i>De</i> tailed part in the	ticulars text at					pter are	prin	ted
REQ	UISITES TO THE		ON OF		RELA	TION (OF LAN	ID L OI	RD
SECT.								P	AGE
	PROPERTY CAPA					•••	•••	•••	2
	PERSONS CAPAB							•••	3
III.	AN ACTUAL LE				EEME		PABLE	OF	
	SPECIFIC EN			•••	•••	•••	•••	•••	78
IV.	EXCLUSIVE Pos	session	•••	•••	•••	•••	•••	•••	85
		CH	IAPTE	R II					
	THE I	DIFFERE	NT KIN	DS OF	TEN!	NCY.			
I.	TENANCY BY SU	FFERAN	CE				•••		90
	TENANCY AT W	ILL	•••	•••					91
III.	TENANCY FROM	YEAR 7	го Чел	R					9 3
IV.	TENANCY FOR A	TERM	OF YE.	ARS				•••	99
v.	TENANCY FOR I	LIFE	•••	•••	•••	•••	•••	•••	100
		CH	APTE	R III	Г.				
	T	HE CON	TRACT	OF TE	NANO	?.			
I.	AGREEMENTS FO	OR LEAS	SES	•••				•••	108
II.	LEASES GENERA	LLY	•••	•••	•••	•••		•••	124
III.	MINING LEASES	S AND I	ICENCE	8	•••	•••	•••	•••	192
		CE	IAPTE	R IV	•				
		TERM	68 OF T	ENAN	OY.				
I.	RENT	•••		•••	•••		•••		217
II.	Repairs	•••	•••	•••	•••	•••	•••	•••	
III.	WASTE	•••		•••	•••		•••	•••	
IV.	MODE OF USING	PREM:	ises		•••		•••		353

•	٠	٠
vı	1	1

CONTENTS.

SECT.									P	AGK
v.	CULTIVATION	OF .	LAND	•••	•••					367
VI.	FENCES .			•••	•••		•••		•••	375
VII.	TREES									377
VIII.	INSURANCE .	••		•••			•••			380
						•••	٠٠٠,		•••	382
х.	QUIET ENJOY				•••				•••	397
XI.	LIVE STOCK .							•••	•••	405
XII.	GAME									406
	Underlease									412
			СН	APT	ER V.					
			AS	SIGNI	MENTS.					
1.	VOLUNTARY .									419
	INVOLUNTARY									450
						•••	***	•••		
			CH	APTI	er vi	•				
	DI	STERI	TANIŅ	ION O	F THE	TENA	NCY.			
T.	MODES APPL	CART	к то	PART	ICULAR	Kini	DS OF T	'EN A N	CY	462
	Modes Gene									
			CH	APTE	ER VI	I.				
	•		TERM	s or (QUITTI	NG.				
I.	FIXTURES		•••			•••				512
	EMBLEMENTS									
III.	AWAY-GOING	CRO	PS AN	D No	N-STAT	UTOR	y Comi	PENSA	TION	
	FOR TILL	AGES,	&c.	•••	•••		•••		•••	533
IV.	STATUTORY (MENTS			536
V.	DELIVERY OF	Pos	SESSIO	N		•••	•••	•••		564

				•		P	AGE
Abbey v. Petch, 8 M. & W. 419 Abbot v. Blair, 8 W. R. 672	••	•••			•••	•••	303
Abbot v. Blair, 8 W. R. 672	••			•••	•••		117
Abinger (Lord) v. Ashton, 17 Eq. 33	08;22	2 W. K	. 582	• • •	199,	207,	209
Absolom v. Knight, Bull. N. P. 181	: Ba:	rnes. 4	50				228
Accidental Death Insurance Co. v. M.	Lacke	nzie. 5	L. T.	20:9 \	V. R. 7	783	76
Ackland v. Lutley, 9 A. & E. 879 .			•••	•••	146,	481.	494
Ackland v. Lutley, 9 A. & E. 879 . Ackland v. Pring, 2 M. & Gr. 937;	10 L.	J. C. 1	P. 231	•••	′	′	450
Acocks v. Phillips, 5 H. & N. 183.	••	•••		•••	•••	•••	498
Acocks v. Phillips, 5 H. & N. 183. Adams v. Cairns, 85 L. T. 10; 17 T	'. L. B	t. 662		•••	•••	•••	149
Adams v. Clutterbuck, 10 Q. B. D.	403;	52 L.	J. Q. I	B. 607 :	48 L.	T.	
614; 31 W. R. 723	′					98.	126
Adams v. Gamble, 12 Ir. Ch. R. 102	2		•••				15
Adams v. Gibney, 6 Bing. 656 . Adams v. Grane, 1 Cr. & M. 880 . Adams v. Hagger, 4 Q. B. D. 480;		•••		•••			398
Adams v. Grane. 1 Cr. & M. 880 .						258.	259
Adams v. Hagger, 4 O. B. D. 480 :	41 L.	T. 224	: 27	V. R. 4	102	81.	219
Adams and Kensington Vestry. Re	. 27 (?h. 1).	394 • !	54 II	. Ch. 2	47 •	
51 L. T. 382 : 82 W. R. 888 .					•••	•••	165
51 L. T. 382; 32 W. R. 883 . Agar v. Young, Car. & M. 78 . Agnew v. Usher, 14 Q. B. D. 78; 8		•••				•••	75
Agnew v. Usher, 14 O. B. D. 78:	54 L.	J. Q. 1	3. 371	: 51 L	T. 75	i2 :	
33 W. K. 120				• • •			576
Ahearn v. Bellman, 4 Ex. D. 201	: 48 T	. J. R	x. 681	: 40 I	. T. 77	71:	
27 W. R. 928				,		-,	475
Ailesbury's Settled Estate (Marques	s of).	Re. 189	2. 1 C	h. 506	: 61 T.	J.	
Ch. 116: 65 L. T. 830: 40 W.	R. 24	3: affir	rmed.	1892. A	. C. 3!	: 6	
67 L. T. 490							41
67 L. T. 490 Alchorne v. Gomme, 2 Bing. 54 Alcock v. Cooke, 5 Bing. 340 Aldam's Settled Estate, Re, '02, 2 C						225,	252
Alcock v. Cooke 5 Bing 340						~ ~ ~ ,	6
Aldam's Settled Estate Re. '02. 2 C	h. 46	· 71 T.	I. Cl	552 :	86 T.	т.	•
510 · 50 W R 500 · 18 T L	R 579	,		199	194	107	205
510; 50 W. R. 500; 18 T. L. Aldenburgh v. Peaple, 6 C. & P. 21: Alderman v. Neate, 4 M. & W. 704).)	•••		100	, 101,	10.,	277
Alderman a Neets AM & W 704	. g Jn	 r 171	•••	•••	•••	•••	-80
Alderson v. Maddison, 7 Q. B. D.	174 .	50 T	r 0'''	 R 488 •	45 T.	T	•
334; 29 W. R. 556; in H. L.	R A	nn Ca	4 AR7	· 52 T.	I Õ	Ŕ	
787 · 40 T. T 908 · 91 W R	320	թթ. Ես	3. 10,	, 02 2	. v. ų.	D.	113
Alderson w White 2 De G & I 07	320	•••	•••	•••	•••	•••	165
787; 49 L. T. 303; 31 W. R. 8 Alderson v. White, 2 De G. & J. 97 Aldin v. Latimer, Clark & Co., '94,	2 Ch	437 •	 83 T.	J. Ch.	601 ·	71	100
I. T 110 · 42 W R 553	2 011	. 101,	00 11	. U. O			88
L. T. 119; 42 W. R. 553 Aldous v. Cornwell, L. R. 3 Q. B. 5	79	•••	•••	•••	•••	•••	184
K70						000	204
Aldridge a Howard 4 M & Cr 991		•••	•••	•••	•••	000,	997
Alexander a Manaiona Proprietory	1 8 ጥ	T. P	491	•••	•••	•••	430
Alford a Violent Con & M 990	10 1.	п. к.	401	210 24	7 478	478	470
Aldridge v. Howard, 4 M. & Gr. 92. Alexander v. Mansions Proprietary, Alford v. Vickery, Car. & M. 280 Allan v. Overseers of Liverpool, L. Allchurch v. Hendon Union. '91. &	D 0.0	 D 10	1	210, 24	, 410,	410,	994
Allchurch v. Hendon Union, '91, 2	ը. Մ	490 .	81 T	T M	 ດີວາ.	65	004
minimum v. menaon emen, er, i	. 4. 2	. 400;	от п.	J. M.	C. 21;	•••	384
L. T. 450; 40 W. R. 86 Allcock v. Moorhouse, 9 Q. B. D. 36	 RR . 4'	 7 T. T	404 -	W	D 071	•••	444
Allen Zamania OO C. D. 041 . E.	10;4:	т С.Р.	704	0U 11	r. 011	•••	444
Allen, Ex parte, 20 C. D. 341; 5:	. L.	J. Un.	124;	4/ L.]	. 05;	øv	457
W. R. 601	 Ob. 40		m	 6 . 95 T	 V D	010	189
Allen m Allen Messler 110	он. 40	,, ,,	ш. 1.	0 ; 00 1	17 . II.	-10	525
Allen v. Allen, Moseley, 112		• • •	• • •	• • •	• • •	•••	020

Allen v. Anthony, 1 Mer. 282	•••				•••		447
Allen v. Bryan, 5 B. & C. 512		•••	•••	•••	•••	•••	226
Allen v. Bryan, 5 B. & C. 512 Allen v. England, 3 F. & F. 49, n Allen v. Flicker, 10 A. & E. 640;	1	•••	•••		•••	•••	571
Allen v. Flicker, 10 A. & E. 640;	3 Jur.	1029	•••	•••	•••	•••	300
Allen v. Hill, Cro. Eliz. 238	•••	•••	•••	•••	•••	•••	90
Allen v. Walker, L. R. 5 Ex. 187	•••	•••	•••	•••	•••	•••	15
Allen v. Woods, 68 L. T. 148 Allen and Driscoll's Contract, A	204	1 01		œ	204 0	OIL.	57 5
226; 73 L. J. Ch. 882, 614;	18, U4, 159 W	R 909	190; E. P 880 •	mrmeu o∩ T.	, U4, 22 ' T 697 ⋅	CII.	
J. P. 253, 469; 2 L. G. R. 9	59 : 20	T. I.	R. 605		1.007,		895
Allhusen v. Brooking, 26 Ch. D.	559 :	53 L. J	. Ch.	520 : 5	1 L. T.	57:	000
32 W. R. 657		•••	•••	•••	•••	81,	409
Alloway v. Steere, 10 Q. B. D. 2	2;52	L. J. Q). B. 3	8;47	L. T. 3	33 ; ٔ	
31 W. R. 290		~~	•••			•••	457
Allport v. Securities Co., Lim., 64	L. J. (Ch. 491	; 72]	J. T. 5	33	•••	400
Allum v. Dickinson, 9 Q. B. D. 6 30 W. R. 930	32 ; 02	דוי יו. מ					390
Altman v. Royal Aquarium Socie	tv 8 C	h D 2	28	•••	•••	•••	367
American Must Corp. v. Hend	ry. 62	L J.	Õ. B	. 888 :	68 L.	Т.	00.
742	•••	•••	• -	•••	•••	283,	284
742 Amfield v. White, Ry. & M. 246 Anderson v. Martindale, 1 East, 4	•••	•••		•••	•••		386
Anderson v. Martindale, 1 East, 4	197				•••	•••	160
Anderson v. Midland Ry. Co., 3	E. &	E. 614	; 30 I	. J. G). B. 94	; 7	084
Anderson v. Martindale, 1 East, 4 Anderson v. Midland Ry. Co., 3 Jur. N. S. 411; 3 L. T. 809 Anderson v. M. S. & L. Ry. Co.		n,	80), 92, 2 @a	47, 248,	27 L,	274
894	0., 40	W. D. L)09 ; a	mrmeu	, 80, 2	401	447
Anderson v. Oppenheimer, 5 Q. I	3. D. 6	02:49	L. J.	Q. B. 7	08	*	402
Anderson v. Vicary, '99, 2 Q. B.	436 : '(00. 2 Q	. B. 28	7: 68	L. J. Q.	B.	
970; 69 Ibid. 713; 83 L. T.	15; 4	8 W. Ř	. 593 ;	15 T.	L. R. 4	96;	
16 Ibid. 421	•••	•••		•••	•••		410
Anderton and Milner's Contract,	Re, 45	Ch. D.	476;	59 L. J	J. Ch. 7	65;	
68 L. T. 332; 39 W. R. 44 Andrew v. Hancock, 1 Br. & B. 3 Andrew v. Pearce, 1 B. & P. N. 1		•••	•••	•••	•••		169
Andrew v. Hancock, I Br. & B. 3	1/ D 1KO	•••	•••	•••	228,		41
Andrew v. Pearce, 1 B. & P. N. I Andrew v. St. Olave's Board of W	Jorka ,	98 1 0	B 72	75 - 87	LÜO	ж В	41
592; 78 L. T. 504; 46 W. R	L. 424 :	62 J.	P. 328		w.		383
Andrews' Case, Cro. Eliz. 214				•••	•••		399
Andrews v. Dixon, 3 B. & A. 645	•••	•••	•••	•••	•••		318
Andrews v. Halles, 2 E. & B. 348):	4. d. U.	D. 4(1)	#: I/.	JNT. /DI	•••	565
Andrews v. Paradise, 8 Mod. 318	•••	•••	•••	•••		•••	400
Andrews v. Russell, Bull. N. P. 8							300
Angell v. Duke, L. R. 10 Q. B.	1/4; 4	4 Li. J.	ų. Б .	18; 8		20;	129
23 W. R. 307 Angell v. Duke, 32 L. T. 320; 23	3 W. R	548	•••		•••		129
Angell v. Harrison, 17 L. J. O. F	3. 25 :	12 Jur.	114		•••		273
Angell v. Harrison, 17 L. J. Q. I Angell v. Randall, 16 L. T. 498	•••	•••	•••	•••	•••	•••	380
Anglesev's M. of Estate Re 17	Fa. 28	3 · 22 T	W. R	507		•••	240
Anon., 4 Leon. 4, c. 15 Anon., Amb. 209 Anon., Poph. 4 Anon., Loift, 275 Anon., 1 Mod. 180 Anon. v. Cooper, 2 Wils. 375	•••	•••	•••	•••	•••	•••	7
Anon., Amb. 209	•••	•••	•••	•••	•••	•••	210
Anon, Poph. 4	•••	•••	•••	•••	•••	•••	20 568
Anon 1 Mod 180	•••	•••	•••	•••	•••	•••	146
Anon. v. Cooper, 2 Wils. 375 Anstey v. Hobson, 1 Sm. & G. 50 Antil v. Godwin, 68 J. P. 441; 1	•••	•••	•••	•••	•••		415
Anstev v. Hobson, 1 Sm. & G. 50	5	•••	•••	•••	•••	,	5
Antil v. Godwin, 63 J. P. 441; 1	5 T. L.	. R. 469	2	•••	•••	•••	391
Antrim, Marquis of, v. D. of Buc	ekingna	m, 1 C	n. Cas.	. 17	•••	•••	15
Appleby, Ex parte, 20 W. R. 411 Appleton v. Campbell, 2 C. & P.		•••	•••	•••	•••	•••	78
Appleton v. Campbell, 2 C. & P.	347	•••	•••	•••	•••	•••	354
Appleton v. Dolly, Yelv. 135	. 9 W	D are	P	# F	167	•••	204 570
Appleton v. Doily, Yelv. 135 Appleton v. Morray, 2 L. T. 516 Archbold v. Scully, 9 H. L. C. 3	, o w.	т. ооз	, , z r	or F.	970	331	578
Archbold v. Scully, 9 H. L. C. 3 Arden v. Boyce, '94, 1 Q. B. 796	: 63 T	j. o.	B. 88	8:70	L. T. 4	80 :	
42 W. R. 354							575
Arden v. Pullen, 10 M. & W. 321	.	•••	•••	•••	•••	•••	334
•							

						PAGE	
Arden v. Sullivan, 14 Q. B. 832;	19 L.	J. Q. 1	B. 268:	14 Ju	. 712	97	
Arding v. Economic Printing Co.,	79 L.	Г. 420	; on ap	o. Ib. 6	22	398, 396	
Arding v. Economic Printing Co., Arnal, Ex parte, 24 Ch. D. 2	26; 5	3 L.	J. Ch.	134;	49 L.	T.	
221	•••			•••	•••	458	
Arnison, Ex parte, L. R. 3 Ex. 56	; 37	L. J. I	5x. 57	•••	•••	307	
Arnold Powert & Co at Padford 1	7 TP 1	r. 12 q	201	•••	•••	319	
Arnison, Ex parte, L. R. 3 Ex. 56 Arnitt v. Garnett, 3 B. & A. 440 Arnold Perrett & Co. v. Radford, 1 Arnott, Re, 35 Sol. Journ. 623	., 1.	L. 16. C	101	•••	•••	865	
Arnsby v. Woodward, 6 B. & C. 5	19					496, 500	
Arran v. Crisp, 12 Mod. 54	•••	•••	•••	•••	•••	386	
Arnold Perrett & Co. v. Hadlord, 1 Arnott, Re, 35 Sol. Journ. 623 Arnsby v. Woodward, 6 B. & C. 5: Arran v. Crisp, 12 Mod. 54 Arundell v. Trevill, 1 Sid. 81 Ashby v. Wilson, '00, 1 Ch. 66; 69	•••	•••	 	•••	•••	809	
Ashby v. Wilson, '00, 1 Ch. 66; 69	L. J.	Ch. 47	; 81 L.	T. 480	; 48 W	. R.	
105			•••	•••	358,	359, 438	}
Asharoft a Rouma 2 R & Ad 62	17	•••	•••	•••	•••	104	•
Ashfield a Ashfield Sir W Jones	* 167	· Nov	92 · T.	etch 1	90	002	,
Ashmore v. Hardy, 7 C. & P. 501	, 10,	, 1,0,,				273	,
Ashton v. Jones, 28 Beav. 460	•••	•••	•••	•••	•••	39	,
Ashby v. Wilson, '00, 1 Ch. 66; 69 105 Ashcombe v. Mitchell, 12 T. L. R. Ashcroft v. Bourne, 3 B. & Ad. 68 Ashfield v. Ashfield, Sir W. Jones Ashmore v. Hardy, 7 C. & P. 501 Ashton v. Jones, 28 Beav. 460 Astbury, Ex parte, 4 Ch. 630; 38 I 997	J. E	3k. 9;	20 L. 7	r. 997 ;	; 17 W.	R.	
997	•••	•••	•••	•••	•••	,	
997 Aston v. Exeter, 6 Ves. 288 Astry v. Ballard, 2 Mod. 198	•••	•••	•••	•••	•••	376	
Astry v. Ballard, 2 Mod. 198	 511 .	10 T	T '0 T		•••	211	
Atherstone v. Bostock, 2 M. & Gr. Atherton, Re, W. N. 1891, p. 85		10 1.	J. U. I	. 113	•••	184	
Athy Guardians v. Murphy, 1896.	1 Ir.	R. 65	•••	•••	•••	45, 47 22	2
Athy Guardians v. Murphy, 1896, Atkinson, Re, 31 Ch. D. 577; 55 L	. J. C	h. 49 :	54 L.	Г. 503 :	34 W	R.	•
445	•••	•••	•••			47	7
Attack v. Bramwell, 3 B. & S. 520	; 32	L. J.	Q. B. 1-	46;9.	Jur. N.	S.	
892	•••	•••	•••	2	33, 28 4,	307, 313	3
Attersoil v. Stevens, 1 Taunt. 183	• • • •	•••	•••	•••	•••	351	ļ
Attoe v. Hellimings, 2 Buistr. 281	 0 T 1	F.,	298	•••	•••	448	, 2
Attack v. Bramwell, 3 B. & S. 526 892 Attersoll v. Stevens, 1 Taunt. 183 Attoe v. Hemmings, 2 Bulstr. 281 AttGen. v. Brown, 3 Ex. 662; 1 AttGen. v. Brooke, 18 Ves. 326 AttGen. v. Cox, 3 H. L. C. 240 AttGen. v. Cross, 3 Mer. 524 AttGen. v. Dixie, 13 Ves. 519 AttGen. v. Foord, 6 Beav. 288 AttGen. v. Fullerton, 2 V. & B. AttGen. v. Glyn, 12 Sim. 84 AttGen. v. Griffith, 13 Ves. 565 AttGen. v. Great Eastern Ry. Co 40 L. T. 265; 27 W. R. 759	о п. л	. Ex.	990	•••	•••	38	2
AttGen. v. Cox. 3 H. L. C. 240	•••	•••		•••		492	ź
AttGen. v. Cross, 3 Mer. 524				•••	•••	38	3
AttGen. v. Dixie, 13 Ves. 519	•••		•••	•••	•••	38	3
AttGen. v. Foord, 6 Beav. 288	• • • •	•••		•••	•••	38	3
AttGen. v. Fullerton, 2 V. & B.	263	•••	•••	•••	•••	376	3
AttGen. v. Glyn, 12 Sim. 84	•••	•••	•••	•••	•••	38	,
AttGen. v. Grimth, 15 ves. 505		αn	440 . 4	 IS TT	Ch 4	oc	•
40 L. T. 265 : 27 W. R. 759	,, II ·	о <u>и</u> . <i>D</i> .	*****			8	3
AttGen. v. Great Yarmouth. 21	Beav.	625	•••		•••	38	3
AttGen. v. Hammer, 27 L. J. Ch	n. 837	•••	•••	•••	•••	201	l
AttGen. v. Hotham, T. & R. 209	·	•••	•••	•••	•••	75	
AttGen. r. Morgan, 2 Russ. 306	•••	•••	•••	• • •	•••	00	
AttGen. v. Owen, 10 Ves. 555		•••	•••	•••	•••	38, 58	
AttGen. v. Great Yarmouth, 21 J AttGen. v. Great Yarmouth, 21 J AttGen. v. Hammer, 27 L. J. Cl AttGen. v. Hotham, T. & R. 209 AttGen. v. Owen, 10 Ves. 555 AttGen. v. Pargeter, 6 Beav. 150 AttGen. v. Stephens 6 D. M. &	' ₁₁		т''' т	Ch e		88 Tur	5
Artecen. v. Stophons, v D. M. a	u. 11	, 20	D. 0.	CIL. U	. ,	376, 572	2
N. S. 51 AttGen. v. The Playhouse, 19 T. AttGen. v. Tomline, 5 Ch. D. 75 AttGen. v. Tomline, 15 Ch. D. 1	L. R	. 580			•••	351	
AttGen. v. Tomline, 5 Ch. D. 75	50	• •••	•••	•••	•••	200	_
AttGen. v. Tomline, 15 Ch. D. 1	50; 4	13 L. I	486	•••	•••	565	5
AttGen. of Untario v. Mercer, 8	App.	Cas. 7	07;52	Ы. J.	P. U.	84;	
49 L. T. 312 Aubrey v. Fisher, 10 East, 446 Augustien v. Challis, 1 Ex. 279; April c. Mills 4 T. R. 94	•••	•••	•••	•••	•••	208	
Aubrey v. Fisher, 10 East, 446	 17 T	т ъ-	79	•••	•••	349, 378	
Augustien v. Unailis, I Ex. 279;	11 11	J. LX	. 10	•••	•••	318	
Auriol v. Mills, 4 T. R. 94 Austerberry v. Corp. of Oldham, 2						: 58	-
L T. 543 · 33 W. R. 807						488	3
Austin v. Beddoe, 41 W. R. 619 Auworth v. Johnson, 5 C. & P. 23 Aveline v. Whisson, 4 M. & Gr. 8 Avenell v. Croker, Moo. & M. 172	•••	•••	•••	•••	•••	451	ı
Auworth v. Johnson, 5 C. & P. 28	9	•••	•••	•••	•••	332	2
Aveline v. Whisson, 4 M. & Gr. 8	01;1	2 L. J.	. C. P.	58	•••	124, 182	
Avenell v. Croker, Moo. & M. 172	2	•••	•••	•••	•••	288	3

							1	AGE
Avery v. Cheslyn, 3 A. & E.	75	•••	•••	•••	•••	•••	F & F	
Avery v. Wood, '91, 3 Ch. 1	15;6	i L. J					39	
W. R. 577 Axford v. Perrett, 4 Bing. 5	88	•••	•••	•••	•••	•••	···•	313 311
Aylett v. Ashton, 1 My. & (Ör. 105			•••	•••			15
Axford v. Perrett, 4 Bing. 5 Aylett v. Ashton, 1 My. & C Aylet v. Dodd, 2 Atk. 238 Aylward v. Kearney, 2 Ball			•••	•••	•••	•••		228
Aylward v. Kearney, 2 Ball	& B. 4	163	•••	•••	•••	•••	6	, 78
Babbage v. Coulburn, 9 Q. I	3. D. 2	235 ; 5	2 L. J	. Q. B	. 50;	46 L.	T.	
794; 30 W. R. 950		•••	•••	•••	•••	•••	•••	159
794; 30 W. R. 950 Bach v. Meats, 5 M. & S. 20 Bachelour v. Gage, Cro. Car.	. 188	•••	•••	•••	•••	•••	 441,	275 454
Badcock v. Hunt, 22 Q. B.					; 60 L	T. 31	4;	
37 W. R. 205 Badeley v. Vigurs, 4 E. & B.	71 . 6	 00 T	₀	 D 977				388
159	. 11, 4	ю ц.	Q.	D. 011	, 1 Ju	r. IX.		449
	53	•••	•••	•••	•••	•••	•••	64
Badger v. Ford, 3 B. & A. 1 Badkin v. Powell, 2 Cowp. 4 Baggallay v. Pettit, 5 C. B. N	176 J Q #		T		 20 - 5 T	XT		289
868								159
Bagge v. Mawby, 8 Ex. 641	; 22 L	. J. E	. 236	•••	•••	288,	289,	323
Bagge v. Mawby, 8 Ex. 641 Baggs, Re, '94, 2 Ch. 416, n Bagot's Settlement, Re, 189	4 1 (1	 h 177	 • 8 9 T	CP	 616 .	 70 T.	.:. Т	13
229; 42 W. R. 170	1 , 1 0		, 00 D.			то п.		48
Remahawa a Coward Cro L	ac. 147							909
Bagshawes (Lim.) v. Deacon L. T. 776; 46 W. R. 6: Bail v. Mellor, 19 L. J. Ex. Baily v. De Crespigny, L. R	1, '98, : 18	2 Q. B	. 173 ;	67 L. J	. Q. B.	658;	78 969	904
Bail v. Mellor, 19 L. J. Ex.	279	•••	•••	•••	•••	•••		288
Bailey r. Hobson, 39 L. J. (Ch. 270)		•••			<u></u>	78
681; 17 W. R. 494	. 4 Q.	B. 180	; 38 L	. J. Q.	В. 98 ;	19 L.	T. 162	447
Bain v. Brand, L. R. 1 App.	. Cas. :	762	•••	•••	•••	•••		518
Bain v. Fothergill, L. R. 7 H	. L. 15	8;43	L. J. 1	Ex. 243	; 31 L	. Т. 38	57;	
23 W. R. 261 Baines v. Lumley, 16 W. R.	674	•••	•••	•••	•••	•••	•••	115 572
Baines v. Lumley, 16 W. R. Baird v. Fortune, 4 Macq. H. Baker, Re, 8 Morr. 116	I. L. 1	27		•••	•••	•••		127
Baker, Re, 8 Morr. 116			***			053.		458
L. T. 33 : 49 W. R. 691	e, 01, 1:8 M	z K. D Iana. 2	. 028 ; 79	70 L. J	. K. D	. 000 ;	ου 459,	460
Baker, Re, Lupton, Ex parte L. T. 33; 49 W. R. 69: Baker v. Davis, 3 Camp. 474 Baker v. Gostling, 1 Bing. 1	4	•••		•••	•••	•••		230
Baker v. Gostling, 1 Bing. I	N. C. 1	9	P	161	 e T	710		415 387
Baker v. Greenhill, 3 Q. B. Baker v. Holtzapiel, 4 Tau	140; 1 it. 45		. ų. <i>D</i> . 				•••	235
Baker v. Meryweather, 2 C.	& K. 7	37		•••	•••	•••	•••	188
Ball a Bridge 22 W R 5	K. 663 59	•••	•••	•••	•••	•••	•••	138 105
Ball v. Cullimore, 2 Cr. M.	& R. 1	20		•••	•••	•••	92,	
Baker v. Meryweather, 2 C. Baker v. Richardson, 6 W. I Ball v. Bridges, 22 W. R. 5 Ball v. Cullimore, 2 Cr. M. Bally v. Wells, 3 Wils. 25 Bamford v. Creasy. 3 Giff. 6		•••	•••	•••	•••	•••		436
Bamford v. Creasy, 3 Giff. 6' Bandy v. Cartwright, 8 Ex. Bangor, B. of, v. Parry, '91, 379; 39 W. R. 541 Banker, Reblack, 20 I. J.	75 918 - 9	 22 I. J	Ex 9	285	•••	•••	•••	510 397
Bangor, B. of, v. Parry, '91,	2 Q. I	3. 277	60 L.	J. Q. I	3. 646 ;	65 L.	T.	
379; 39 W. R. 541			•••	•••	•••	•••	•••	37
Bannister v. Hyde. 2 E. & F.								577
171; 1 L. T. 438	•••	•••	•••	•••	•••	284,	293,	
Darber v. Brown, I C. B. N.			L. J. C	. P. 41	; 3 Jur	. N. S.	18	226 376
Barber v. Whiteley, 34 L. J. Barclay, Ex parte, 5 D. M. &	. w	03: 25	 5 L. J.	 Bk. 1	 ; 1 Ju	ır. N.	s.	010
_ 1145	•••	•••	•••	•••	•••		525,	
Barer v. Welland, 12 L. F. Barff v. Probyn, 64 L. J. Q.	t. Ir. 8 R KK	55 7 • 79 °	 T. T 1	 18	•••	•••	•••	387 5 27
Dargent t. Inompson, 4 tm	1. 4/0	; y jui	· 14 · 15	. 1102;	9 L. T	. 3 65	•••	510
Baring v. Abingdon, '92, 2 (Ch. 374	; 62	L. J. (Ch. 10	5;67	L. T.	6;	
41 W. R. 22	•••	•••	•••	•••	•••	•••	•••	187

Rorker a Rorker S.C. & D. 557							AGE 345
Barker v. Barker, 3 C. & P. 557 Barker, Re, Wallis v. Barker, 88 I Barkehira v. Grubb, 18 Ch. D. 616	T. 68	35	•••	•••	•••	•••	52
some admire to the control of the co	,, ,, ,,	 .	410 1 27	, 40 ,	J. Z. U	83;	
29 W. R. 929 Barlow v. Rhodes, 1 Cr. & M. 439	•••	•••	•••	•••	•••	•••	138
Barlow v. Rhodes, 1 Cr. & M. 439 Barlow v. Teal, 15 Q. B. D. 501;	 Ka T 1	 R () T	 Kaa .	54 T.	т 89	137,	198
W. R. 54							467
Burnard, Ex parte, 46 L. T. 824	•••	•••			•••		455
Barnard v. Godscall, Cro. Jac. 309	•••	•••	•••	•••	•••		441
Barnes v. Dowling, 44 L. T. 809 Barnett v. Earl of Guildford, 11 E.	- 10	•••	•••	•••	•••		352 60
Barnfather v. Jordan, 2 Dougl. 459	x. 19	•••	 x. 308	•••	•••	•••	440
Barrett v. Duke of Bedford, 8 T. F.	i. 602	•••	•••	•••	•••	•••	383
Barret v. Barret, Hetley, 35	•••	•••	•••	•••	•••	350,	
Barrett v. Blagrave, 5 Ves. 555 Barrett v. Rolph, 14 M. & W. 348			- 300	•••	•••	•••	228
Barrow v. Isaacs, '91, 1 Q. B. 41'	7 · 60	J. J. E.	x. 200) R 1'	70 · 84	T. T e	 188	415
39 W. R. 338	•••	•••	•••			510.	511
Barra v. Lea. 33 L. J. Ch. 437: 1	2 W. I	R. 525			212	218,	220
Barry v. Goodman, 2 M. & W. 76: Barry v. Nugent, 3 Dougl. 179 Barry v. Stanton, Cro. Eliz. 330 Barton v. Capewell Patents Co., 6: Barton v. Dawes, 10 C. B. 261; 1 Barton v. Fitzgerald, 15 East, 530 Bartram v. Aldous, 2 T. L. R. 237 Barwick's Case, 5 Rep. 93 b Barwick v. Foster, Cro. Jac. 227; Barwick v. Thompson, 7 T. R. 48: Bastable, Re, The Trustee, Ex pa 784; 84 L. T. 825; 49 W. B. Bastan v. Carew 3 R. & C. 640	8	•••	•••	•••	•••	83,	175
Barry v. Nugent, 3 Dougl. 179	•••	•••	•••	•••	•••	•••	80 421
Barton v. Canewell Patents Co. 6	8 L. T.	857	•••	•••	•••	•••	164
Barton v. Dawes, 10 C. B. 261: 1	9 L J.	C. P.	802	•••	•••	127,	
Barton v. Fitzgerald, 15 East, 530		•••		•••	•••		400
Bartram v. Aldous, 2 T. L. R. 287	•••	•••	•••	•••	•••	•••	855
Barwick's Case, 5 Rep. 93 b	 Vale	167	•••	•••	•••	•••	148
Burwick v. Poster, Cro. Jac. 227;	R EIV.	107	•••	•••	•••	•••	222 76
Barwick v. Thompson, 7 T. R. 48: Bastable, Re, The Trustee, Ex pa 784; 84 L. T. 825; 49 W. R.	rte, '01	l. 2 K.	B. 51	8:70	L. J. K	. B.	••
784; 84 L. T. 825; 49 W. R.	. 561;	8 Mar	ıs. 239	•••	•••	•••	456
Baston v. Carew, 3 B. & C. 649			•••	•••	•••	•••	582
Bastin v. Bidwell, 18 C. D. 238;	44 L. 1	г. 742	•••	•••	•••	15 9 ,	
Retempn a Allen Cro Fliz 427	•••	•••	•••	•••	•••	•••	3 94 19
Bateman v. Farnsworth. 29 L. J.	Ex. 36	5	•••	•••	•••	•••	318
Basten v. Carew, 3 B. & C. 649 Bastin v. Bidwell, 18 C. D. 238: Batchelor v. Bigger, 60 L. T. 416 Bateman v. Allen, Cro. Eliz. 437 Bateman v. Farnsworth, 29 L. J. Bates v. Donaldson, 1896, 2 Q. F	3. 241;	65 L	J. Q.	B. 578	; 74 L	. T.	
751; 44 W. R. 659 Bath's Case, Bishop of, 6 Co. 35a Batson v. London School Board, 2	•••	•••	•••	•••	•••	•••	424
Bath's Case, Bishop of, 6 Co. 35a	. a	D 11	e	m	146	, 147,	
Battison v. Hobson, 1896, 2 Ch. 4	2 L. G.	т. Л 5 Т. Л	O; ZU Ch 89	1. L. J 15 · 74	1. 22 T. T 6	180 .	505
44 W. R. 615		v.			ш. т. ч		480
Baumann v. James, 3 Ch. 508; 18	3 L. T.	424;	16 W.	R. 877	107	, 108,	119
Baxter v. Browne, 2 W. Bl. 973	•••	•••	•••	•••	•••	•••	80
Baxter v. Portsmouth, 5 B. & C.				•••	•••	•••	14 90
Bayley v. Bradley, 5 C. B. 396; 1 Bayley v. G. W. Ry. Co., 26 Ch., Payling Division 2, W. S. 477	D 434	· 51 1	. T. 3	37	•••	•••	138
Baylis v. Dineley, 3 M. & S. 477				•••	•••		6, 7
Baylis v. Jiggens, 1898, 2 Q. L. T. 78	B. 315	6; 67	L. J.	Q. F	. 793;	79	
L. T. 78		··· »			•••		390
Baylis v. Le Gros, 4 C. B. N. S. &					•••	342,	287
Rayliss v. Usher, 4 Moo. & F. 780	•••	•••	•••	•••	•••	•••	287
Baylis v. Usher, 4 Moo. & P. 790 Bayliss v. Fisher, 7 Bing. 153 Bayly, Exparte, 22 L. J. Bank. 2	6	•••	•••		•••		325
Bayly v. Corporation of Leominste	er, 1 V	es. 476		•••	•••	•••	167
Bayly v. Went, 51 L. T. 764	•••	•••	•••	•••	•••	•••	252
Baylis v. Usner, 4 Moo. & P. 790 Bayliss v. Fisher, 7 Bing. 153 Bayly, Exparte, 22 L. J. Bank. 2 Bayly v. Corporation of Leominste Bayly v. Went, 51 L. T. 764 Baylye v. Hughes, Cro. Car. 137 Bayne v. Walker, 3 Dow, 233	•••	•••	••	•••	•••		435
Raynes & Co. v. Lloyd & Song 1:	895. 1	Q. B.	820 : 1	895. 2	Q. B. 4	310 :	334
Bayne v. Walker, 3 Dow, 233 Baynes & Co. v. Lloyd & Sons, 19 64 L. J. Q. B. 787; 73 L. T.	250 ;	14 W.	R. 328		· ·	397	898
navnes v. Smith, 1 r.sh. 200			•••	•••	•••	•••	261
Baynham v. Guy's Hospital. 3 Ve	s. 295		 T O T				
Baynton v. Morgan, 22 Q. B. D. 148	74;	98 Tr.	J. Q. I). 139 j	5/ W	. K. 287,	940
4 = U	•••	• • •	• •	•••	•••	4019	270

							AGE
Beachey, Re, '04, 1 Ch. 67; 73 L	. J. Cb	. 68		•••	•••		429
Beadel v. Pitt, 11 L. T. 592	•••	•••		•••	•••	•••	229
Beale v. Sanders, 3 Bing. N. C. 8	50;1	Jur. 10	88	···	- · :: -	94	, 97
Bealey v. Stuart, 7 H. & N. 753;	81 L.	J. Ex.	281;8	Jur. 1	N. S. 8	89	366
Bealey v. Stuart, 7 H. & N. 753; Beamish v. Cox, 16 L. R. Ir. 270 Bear v. Caldicott, 4 Q. B. 123	•••	•••	•••	•••	•••	•••	467 288
Beard v. Knight, 8 E. & B. 865							200
782						820,	322
Beardmore v. Meakin, 1885, L. J.	N. C.	8	•••	• • •	•••	•••	410
Beardman v. Wilson, L. R. 4 C.	P. 57	; 38 L	. J. C.	P. 91	; 19 L	. T.	
282; 17 W. R. 54	•••	•••	•••		•••	•••	415
Beatson v. Nicholas, 6 Jur. 620	•••	•••	•••	•••	•••	•••	165 570
Beattie v. Mair, 10 L. R. Ir. 208 Reaty v. Gibbons, 16 East, 116: 1	 14 R. R	320	•••	•••	•••	•••	535
Beauchamp (Earl) v. Winn, L. R.	6 H.	L. 228 :	22 W	. R. 19	3	•••	135
Beaudelev v. Brook, Cro. Jac. 189			•••			126.	
Beaufort (Duke of) v. Bates, S.D. l	F. & J.	381;3	1 L. J.	Ch. 48	1;6L	ጥ.	
82; 10 W. R. 200	•••		•••	34	4, 514,	529,	530
Beavan v. Delahay, 1 H. Bl. 5			•••	•••	•••	276,	
Beavan v. Delahay, 1 H. Bl. 5 Beavan v. M'Donnell, 9 Ex. 309; Beck v. Denbigh, 29 L. J. C. P.	10 EX.	. 184 Tun N		e o 1		K4 .	18
8 W. R. 392	2/0; 0	Jur. I	. 6. 98	0; 2 1	u. 1. 1	.54 ;	287
Beck v. Rebow, 1 P. Wms. 94	•••	•••	•••	•••	•••	•••	525
Beddall v. Maitland, 17 C. D. 17	74: 50	L. J. (Ch. 401	: 44]	L. T. 2	48:	
29 W. R. 484	•••	•••	•••		•••	•••	570
Beddington_v. Atlee, 35 C. D. 3	17;56	L. J. (Dh. 655	; 56 1	L. T. 5	14;	
85 W. R. 799	•••	•••	•••	•••	•••	•••	139
Bedell v. Constable, Vaughan, 179		•••	•••	•••	•••	•••	8
Bedford Union a Bedford Impr.	1	7 F-	777 . 9	1 T. f	W. C	994	41 387
Bedford Union v. Bedford Impr. (Beer v. Beer, 12 C. B. 60; 21 L.	J. C. P	124:	16 Jur	. 923	ы. с.	224	152
Beer v. Santer, 10 C. B. N. S. 43	5	,				•••	344
Page w Williams Of M & D 5	21			•••	•••		491
Belaney v. Belaney, 2 Ch. 138; W. R. 369	36 L.	J. Ch.	265; 1	l6 L. 7	C. 269	; 15	
W. R. 369	•••	•••	•••	•••	•••	•••	485
Belasyse v. Burbridge, 1 Lutw. 21	8	•••	•••	•••	•••	•••	261
Belcher v. M'Intosh, 8 C. & P. 72		•••	•••	•••	•••	•••	337
Belfour v. Weston, 1 T. R. 810 Rell v. Wilson 1 Ch. 303 : 2 Dr	k Sm	 845	 	•••	•••	•••	235 199
Bell v. Wilson, 1 Ch. 303; 2 Dr. Bellamy v. Debenham, 45 Ch. D.). 481 :	'91. 1	Ch. 41	 12 : 6 0	L. J.	Ch.	100
166; 64 L. T. 478; 39 W. R	257						108
Bellasis v. Burbrick, 1 Salk. 209	•••	•••	•••	•••	•••	•••	300
Bellingham v. Alson, Cro. Jac. 52	. 			<u> </u>	• • •	•••	63
Benn Davis, Re, 55 L. J. Q. B. 21	17;54	L. T. 8	30 4 ; 84	W. R	. 442	262,	
Bennett's Case, 2 Str. 787 Bennett v. Bayes, 5 H. & N. 3	01. 00	F T	TP	4 o T	· · · · · · · · · · · · · · · · · · ·	E0 .	317
8 W. R. 320	91; 29	п. т.	EX. 22	4; Z 1	J. I. I		283
Bennett v. Herring, 3 C. B. N. S.	370	•••	•••	····	•••	339,	
Bennett v. Ireland, E. B. & E. S.	26 : 8 8	L. J.	Q. B. 4	8:4J	ur. N	. 8.	
1104		•••	•••		9	4, 97,	285
Bennett v. Robins, 5 C. & P. 379	•••	•••	•••	•••	•••	•••	253
Bennett v. Sadler, 14 Ves. 256						•••	357
Bennett v. Womack, 7 B. & C.	827; 1	M. &	Ky. 044	1; 8 C	. & P.	96;	100
Bennett v. Womack, 7 B. & C. 6 L. J. (O. S.) K. B. 175 Bensing v. Ramsay, 14 T. L. R. 3	4K - 89	I P	152, I	194, 19	9, 190	, 157,	269
Kanson # (+ingon X Atk XVD						•••	228
Bentley, Re. Wade v. Wilson, 54	L.J. C	h. 782	: 33 W	R. 6	10	•••	44
Bentley, Re, Wade v. Wilson, 54 Berkeley v. Hardy, 5 B. & C. 355		•••	•••	•••	•••	•••	70
nernev v. mioore, z miay, r. C. o.	IU			•••			416
Berrey v. Lindley, 3 M. & Gr.	498;	11 L	J. C	. P. 27	7;5	Jur.	400
1061	•••	•••	•••	•••	9	5, 98,	471
Berriman v. Peacock, 9 Bing. 884 Berry v. Gibbons, 8 Ch. 747; 29	T. T 8	 (g . 91	w p	 754		877,	61
Bertie v. Beaumont, 16 East, 33					•••	•••	88
DOLLE V. DOMILIONS, IV 1988, 00	•••	•••	•••	•••	•••	•••	00

Besley v. Besley, 9 C. D. 103; 38 L.	T 844	· 97 W	R 184		PAGE 114
Ressell a Landsherg, 7 O R 638 · 1	4 T. J	O B 3	. 16. 10 1 55 • 9 Jnr	578	480
Bessell v. Landsberg, 7 Q. B. 688; 1 Bethell v. Abraham, 17 Eq. 24;	13 L. J	. Ch. 1	80 · 29 T.	T. 715	. 400
22 W. R. 179					61
Bethell v. Blencowe, 3 M. & Gr. 119	: 10 L	J. C. P	. 243	i	75, 465
Bettingham, Re, 9 T. L. R. 48	•	• • • •	•••		393
Bettingham, Re, 9 T. L. R. 48 Bettisworth's Case, 2 Rep. 31a Betty, Re, 1899, 1 Ch. 821; 80 L. T.		•••	•••		186
Betty, Re, 1899, 1 Ch. 821; 80 L. T	. 675	•••	•••		852
Betty v. numphries, ir. K. v Eq. 33	z	•••	•••		9
Bevan v. Barnett, 13 T. L. R. 310	• •••		•••		501
Bevan v. Chambers, 12 T. L. R. 417 Bevan v. Habgood, 1 J. & H. 222	•••		•••	•••	533
Bevan v. Habgood, I J. & H. 222	• ••		•••		51
Bevil's Case, 4 Rep. 8a	T T C	D 100			808
Bickford v. Parson, 5 C. B. 920; 17	L. J. C	T. T. CI	; 12 Jur.	3// ·	446
Bickmore v. Dimmer, '03, 1 Ch. 15 51 W. R. 180; 18 T. L. R. 416	10 ; 12	L. J. UI	1. 90; 00	Tr. 1. 10);)K1 0 <i>27</i>
Bicknell # Hood 5 M & W 104 · 9	Jne 7	74. 80	•••	0	851, 867 70, 947
Bidder v. Trinidad Petroleum Co. 17	W.R.	158	•••	•••	530
Biggin v. Bridge, 8 Keb. 534			•••		222
Biggins v. Goode, 2 Cr. & J. 364		• •••	•••	8	15. 316
Bignell v. Clarke, 5 H. & N. 487			· • • •	•••	293
Billinghurst v. Speerman, 1 Salk. 29	7		•••		453
Birch v. Clifford, 8 T. L. R. 103			:		347
Birch v. Stephenson, 3 Taunt. 469			•••		227
51 W. R. 180; 18 T. L. R. 416 Bicknell v. Hood, 5 M. & W. 104; 8 Bidder v. Trinidad Petroleum Co., 17 Biggin v. Bridge, 8 Keb. 534 Biggins v. Goode, 2 Cr. & J. 364 Bignell v. Clarke, 5 H. & N. 487 Billinghurst v. Speerman, 1 Salk. 29 Birch v. Clifford, 8 T. L. R. 103 Birch v. Stephenson, 3 Taunt. 469 Birch v. Wright, 1 T. R. 378 Bird v. Baker, 1 E. & E. 12; 28 L. J			23	8, 412, 4	64, 466
Bird v. Baker, 1 E. & B. 12; 28 L. J. Bird v. Defonvielle, 2 C. & K. 415	. Q. B.	7; 4 Ju	r. N. S. 1	148 1	
Bird v. Delonvielle, 2 C. & K. 415	• •		<u>-</u>	3	37, 473
Bird v. Elwes, L. R. 3 Ex. 225; 37					
W. R. 1120 Bird v. Great Eastern Ry. Co., 19 C 11 Jur. N. S. 782; 18 L. T. 365	D M	9 040.	04 T T (ŏ	36, 390
11 Ing N S 789 - 18 I. T 865	D. M.	D. 200;	94 LL, J, (J. F. 500); 2
Bird v. Lord Greville, C. & E. 317	, 10 11	. 16. 308	•••		
Bird v. Higginson, 2 A. & E. 696; 6	Thid 8	94	•••		126
Birkbeck v. Paget, 31 Beav. 403			•••		411
Birmingham Breweries Lim. v. James	son, 67	L. J. Ch	. 403 : 78	L. T. 5	12 366
Birmingham, &c., Banking Co. v. Ros	s, 38 C	h. D. 29	5; 57 L.J	. Ch. 601	l ;
59 L. T. 609 : 36 W. R. 914					139
Birmingham Canal Co. v. Cartwright	, 11 Ch	. D. 421	; 48 L. J.	Ch. 552	;
40 L. T. 784; 27 W. R. 597 Birmingham Joint Stock Co. v. Lea, Birmingham, &c., Land Co. and Alld	: · <u>·</u>		•••	1	64, 165
Birmingham Joint Stock Co. v. Lea.	36 L. T	'. 843			485
Birmingham, &c., Land Co. and Alld 90; 67 L. T. 850; 41 W. R. 189				2 Б. Ј. С	h.
90; 07 L. 1. 800; 41 W. B. 188		• •••			439
Bishop v. Holte, 1 Lev. 112 Bishop v. Bryant, 6 C. & P. 484 Bishop v. Elliott, 24 L. J. Ex. 229;	• •••	• •••	•••		24
Righon at Elliott 24 L. I Ry 220	11 Ex	 118 991	•••	5	286
Bishop v. Goodwin, 14 M. & W. 260			•••	2	25, 531 05, 2 20
Bishop v. Howard, 8 D. & R. 293: 2	B. & C	2. 100	•••	2	90, 95
Bishop v. Taylor, 60 L. J. Q. B. 556	: 64 L.	T. 529 :	39 W. R	. 542 .	156
Bishop Auckland Industrial, &c., S	ociety	v. Butte	rworth Co	lliery Co)
Bishop Auckland Industrial, &c., S '04, 2 Ch. 419; 73 L. J. Ch. 835	; 90 L	T. 149	68 J. P.	177, 459	;
20 T. L. R. 204, 675					203
Biss, Re, '03, 2 Ch. 40; 72 L. J. Ch.	478;	88 L. T.	403; 51	W. R. 50	
Bisset v. Caldwell, 1 Esp. 206, note	; Peake	N. P. (C. 36		261
Bissill v. Williamson, 7 H. & N. 391	. m :		•••		577
Bissill v. Williamson, 7 H. & N. 391 Black v. Clay, 1894, A. C. 368; 71 Blackmore v. White, 1899, 1 Q. B. 2	L. I. 4	40	D"100		546
	,				
79; 47 W. R. 448 Blades v. Arundale, 1 M. & S. 711			•••		388
Blades v. Higgs, 10 C. B. N. S. 713; Blades v. Higgs, 10 C. B. N. S. 713;	80 T.	I C P	847		262 570
Blagrave's Settled Estates, Re, '03,	1 Ch.	560: 79	L J C	. 817 - 9	570 18
L. T. 253; 51 W. R. 487 Blake, Ex parte, 11 Ch. D. 572; 40	L. T. 8	59 ; 27	W. R. 901	i 4	60, 461
Blake v. Concannon, 4 Ir. R. C. L. 8	328	. ``	•••		
Blake v. Concannon, 4 Ir. R. C. L. S. Blake v. Foster, 8 T. R. 487			•••	•••	77, 255
					-

									:	PAGE
Blake & Co.			3, 2 Q.	B. 420	6;67]	L J. Q.	B. 81	8;79		
188 ; 47 Blakesley v.	TT71 . 1 1		Iare, 1	76	•••	•••	•••	•••	154	384 206
Blatchford v	. Cole,	5 C. B.	N. S.	514;	28 L. J	. C. P.			v. s . '	•
412 Blatchford v	 Plymo	nth (M	avor o	n. 3 B	ing. N.	C. 691	•••	•••	190,	, 567 402
Blaxton v. H	leath, F	oph. 1	4 5	•••	•••	•••	•••	•••	•••	20
Bleakley v. S Blewitt v. To	Smith,	11 Sim	. 150			~	***	~ .	109,	, 110
Al W. F	ritton, . L. 36	1892, 2	Q. B. č) z/ ; 0	1 L. J.	у . в. :	118;0	7 L. T.	. 72;	180
41 W. F Bliss v. Colli Blore v. Giu	ns, 5 B	. & A.	876	•••		•••				239
		3, 1 K.			L. J. K.					100
51 W. H Blore v. Sutt	on. 3 M	 [er. 23]			•••		•••	•••	400,	496 108
Blount v. Pe	arman.	1 Bing	. N. C	. 408		•••		•••	•••	178
Blow v. Lew Blum v. Ans Blunden's Ca Blyth v. Den Boardman v. Boase v. Jacl Bodkin v. Be	is, 19 T	'. L. R.	127	т.	B 040	•••	•••	•••	101	
Blunden's Ca	iey, 02 ase. Cro	J. F. 1 . Eliz.	565		A. 249	•••	•••	•••	191,	, 2 36 221
Blyth v. Den	nett, 1	8 C. B.	178;	22 L.	J. C. P	. 79	•••	•••	•••	480
Boardman v.	Mosty	n, 6 Ve	8. 467	•••	•••	•••	•••	•••	•••	
Bodkin v. Be	kson, ö arker. T	br. & I	5. 189 14 Dec.	1897	•••	•••	•••	•••	•••	178 364
Boddington	v. Robii	nson, L	. R. 10	Ex. 2	270 ; 44	L. J.	Ex. 22	3 ; 33 J	L. T.	001
364; 23	W. K.	925		•••	•••	•••		•••	•••	145
Bogg v. Mid Boileau v. H	lland K esth. 18	y. Co., 198. 2 (4 15q. Ch. 301	310;	т. Л. С	J. Un. 4 lh. 529	140; 10	в L. I. [. Т. (113	166
46 W. H	l. 602	•••	•••	•••	•••	•••	•••	•••	,	200
Bolton v. Bo					J. Ch.	467; 4	0 L. T	. 582	•••	140
Bolton v. To Bolton Partn	miin, 5 ers v. T	A. & F ambert	· 41 (*)	h D 9	95 - 58	T. T.	Ch. 425	 	. T.	94
687; 37	W. R.	434	•••					22	, 104,	108
Bond v. Frek	e, W. I	N. 188	4, 47					 N. G	70	50 8
Bond v. Rosl 4 L. T. 4	ling, 1 1	16. & S. W. R. 1	371; i 74r	30 L.	J. Q. B	. 227 ;	8 Jur.	. N. S.	78;	125
Bonner v. To	ttenhan	n Build	ing So	ciety, I	1899, 1	Q. B. 1	61 ; 68	L. J. 0	Į. Β.	
114; 79 Boodle v. Car	т. т. е	311 • 43	7 W. R	161						442
Boone v. Eyr	moen, a	Bl. 27	31. 200 8. note	; 13 I	J. J. C.	P. 142	; o Jur	. 4/5	234,	230 159
Boone v. Mit	chell, 1	В. & (J. 18	•••	•••	•••		•••	•••	176
Booth v. Alc				; 42 I	. J. Ch	. 557 ;	27 L.	T. 231		
W. R. 7- Booth v. Mac Booth v. Poll Boraston v. C Borgnis v. E Boroughe's C Borradaile v.	40 farlane	 1 B A		104	•••	•••	•••	•••	•••	140 569
Booth v. Poll	lard, 4	Y. & C	. Ex. 6	31		•••	•••		•••	210
Boraston v. C	Freen, 1	6 East,	, 71 E		•••	•••	9	97, 276	, 534,	535
Boronghe's C	awaras, lase 4 l	ZF.& }en 72	. г. 11. Ъ	I	•••	•••	•••	•••	•••	223
Boroughe's C Borradaile v.	Smart,	5 W.	R. 270			•••		•••	•••	182
Botting v. M	artin, 1	. Camp	. 317		• • • •	• • •	•••	• • •	•••	428
Boulton v. R. Bousher v. M	OPGO D	4) Amet	404							9
Bowen v. And Bowen v. Ow	derson,	1894,	Q. B.	164;	42 W.	R. 236		94,	, 835,	467
Bowen v. Ow	en, 11	Q. B. 1	30 ; 17	' L. J.	Q. B.	5				299
Bowers v. Ni Bowes v. Cro	xon, 12 11 e F	FR 9	558, n	.; 18	Tr. 9. 6	у. В. За); 13 J	ur. 334	97	227 , 98
Rowse en Fac	t Landa	n Wat	arwork:	s Co.,	Jac. 324	1;8 M	ad. 87	5	51	. 54
Bowker v. Bu	irdekin,	, 11 M.	& W.	128	•••	•••	•••	•••	•••	183
Bowker v. Bu Bowker v. Co Bowser v. Co Boyce v. Md 51 W R	illiamse lbv. 1 I	on, 5 T	. 14. K. 09	382	•••	•••	•••	495	498	180 510
Bowson v. M	aclean.	2 D. F	. & J.	415	•••	•••	•••		• • • • • • • • • • • • • • • • • • • •	145
Boyce v. Edb	rooke,	03, 1 (h. 836	; 72	L. J. (Ch. 547	7;88	L. T. 3	44;	
51 W R Boyd v. Profs Boyd v. Shor	. 424 16 16 1	 T. T 4	 81	•••	•••	•••	•••	1	15, 49	, DI 285
Boyd v. Shor	rock, 5	Eq. 72	; 37 L	. J. C	h. 144 ;	17 L.	T. 197	; 16 W	. R.	
102	•••	•••	····	•••	•••	•••	51	5, 516,	517,	521

						T)	AGE
Boyle v. Tamlyn, 6 B. & C. 329						1	876
Boys v. Averst, 6 Madd. 316	•••	•••	•••	•••	•••	•••	104
Bracebridge v. Buckley, 2 Price, 2	00	•••	•.•	•••		•••	511
Boys v. Ayerst, 6 Madd. 316 Bracebridge v. Buckley, 2 Price, 2 Brackenbury v. Pell, 12 East, 585	•••	•••	•••	•••	•••	•••	311
Bradourn v. Foley, 5 C. P. D. 129	; 47	L. J. C	. P. 3	1; 38	L. T. 4	121 ;	
26 W. R. 423	•••	•••	•••	•••	•••	•••	536
Bradburne v. Botfield, 14 M. & W.	. 559	•••	•••		•••	•••	160
Bradbury v. Wright, 2 Dougl. 624		T " ^			T 'm		158
Bradley v. Baylis, 8 Q. B. D. 195	; 51	Tr. 9. A	, Б. 1	00; 10	ш. т. з	200;	269
Bradehaw n Euro Cro Eliz 570	•••	•••	•••	•••	•••	•••	137
Bradwill v. Ball 1 Bro C. C. 427	•••	•••	•••	•••	•••	•••	312
Bragge v. Wiseman, 1 Brown, & G	. 22	•••	•••	•••	•••	•••	49
Braithwaite v. Cooksev. 1 H. Bl. 4	65	•••	•••	•••	•••	•••	277
30 W. R. 823 Bradshaw v. Eyre, Cro. Eliz. 570 Bradyll v. Ball, 1 Bro. C. C. 427 Bragge v. Wiseman, 1 Brown. & G Braithwaite v. Cooksey, 1 H. Bl. 4 Bramley v. Chesterton, 2 C. B. N	. 8.	592; 27	L. J.	C. P.	23;3	Jur.	
N. S. 1104 Bramston v. Robins, 4 Bing. 11 Bramwell v. Lacy, 10 Ch. D. 69	•••	•••	•••	•••	•••	•••	56 1
Bramston v. Robins, 4 Bing. 11	•••	_ •••		•••	•••	•••	281
Bramwell v. Lacy, 10 Ch. D. 693	1;48	L. J.	Ch. 3	3 9;40	L. T.	861;	
27 W. R. 463	•••	•••	•••	•••	•••	358,	362
Brandon v. Brandon, 5 Madd. 473		. n''.	1 145	•••			253
Branscombe v. Bridges, 5 Stark. 1	71;	1 B. & (j. 140	•••	255	, 283,	287
Brashian a Jackson & M. & W. 54	0. 19	•••	•••	•••	•••	70	310
Rrawley v. Wada Miclel 664		•••	•••	•••	•••	19,	987
27 W. R. 463	•••	•••	•••	•••	227	362	267
Braythwayte v. Hitchcock, 10 M.	& W	. 494 : 6	Jur.	976		92. 94	. 98
Brazier v. Hudson, 8 Sim. 67		• • • • • • • • • • • • • • • • • • • •	•••		•••		61
Brecknock Co. v. Pritchard, 6 T.						•••	
Brennan v. Bolton, 2 Dr. & War.	349	•••		•••	•••	•••	
Reserves a Flood 4 In C I. D 9	120						
Brereton v. Tuohey, 8 Ir. C. L. R. Bretel v. Neveux, 39 L. T. 257 Brett v. Clowser, 5 C. P. D. 876 Brett v. Cumberland, Cro. Jac. 55	. 190	•••	•••	•••	•••	•••	167
Bretel v. Neveux, 39 L. T. 257	•••	•••	•••	•••	•••	•••	
Brett v. Clowser, 5 C. P. D. 876		D.".11		•••	•••	***	137
Brett v. Cumberland, Cro. Jac. 52	21 ; 1	KO. AU) D (07.74	T "M"	441,	454
							900
45 W. R. 334 Brewer v. Eaton, 3 Dougl. 230 Brewer v. Hill, 2 Anst. 413 Brewer v. Palmer, 3 Esp. 213 Brewster v. Kidgell, Carth. 438;	•••	•••	•••	•••	•••	991,	500 500
Brewer v. Hill 2 Anst 418	•••	•••	•••	•••	•••	•••	904
Brewer v. Palmer, 8 Esp. 213					•••	•••	128
Brewster v. Kidgell, Carth. 438;	1 Ld.	Raym.	317 ;	2 Salk.	616		387
Briant v. Pilcher, 16 C. B. 354 Bridewell Hospital v. Fawkner, 8 Bridge v. Quick, 61 L. J. Q. B. 8 Bridges v. Longman, 24 Beav. 27 Bridges v. Potts, 17 C. B. N. S. 3		• • • • • • • • • • • • • • • • • • • •	•••	•••	•••	•••	159
Bridewell Hospital v. Fawkner, 8	T. L.	R. 637	•••	•••	•••		424
Bridge v. Quick, 61 L. J. Q. B. 8	75;6	57 L. T.	54	•••	•••	•••	508
Bridges v. Longman, 24 Beav. 27			~ ::		. <u>.</u>	_ ::-	500
Bridges v. Potts, 17 C. B. N. S. 3	14;	83 L. J.	C. P.	338; 1	0 Jur. 1	N. S.	
1049; 11 L. T. 3/8	•••	•••	•••	•••	98	6, 466,	468
bridges v. Snivin. S bing. 410					• • •	•••	247
Bridgewater Fraincering Co. De	19 (1)	D 191	49 1	T CI	000	900	
1049; 11 L. T. 373 Bridges v. Smyth, 5 Bing, 410 Bridgewater Engineering Co., Re, Bridgland v. Shapter 5 M & W.	12 Cl	ı. D. 181	; 48]	L. J. Cl	հ. 389	326,	100
Dridgiand v. Shabter, 5 M. & W.	อเบ	•••		• • • •	2	2. IZƏ.	126
Brigg v. Thornton. '04. 1 Ch. 386	3:73	L. J. C	h. 301	: 90 L	T. 327	i, 125, : 52	126
Brigg v. Thornton. '04. 1 Ch. 386	3:73	L. J. C	h. 301	: 90 L	T. 327	i, 125, : 52	126
Brigg v. Thornton, '04, 1 Ch. 38c W. W. R. 276 Briggs v. Sowry, 8 M. & W. 729;	3; 78 : 11 I	L. J. C L. J. Ex	h. 301 . 193	; 90 L	. T. 327	, 125, ; 52 357, 323,	126
Briggs v. Snapter, 5 M. & W. Briggs v. Thornton, '04, 1 Ch. 386 W. R. 276 Briggs v. Sowry, 8 M. & W. 729; Brighton, Mayor of, v. Guardians Q. B. 648	3; 73 11 I of B	L. J. C L. J. Exrighton,	h. 301 . 193 5 C. I	; 90 L.	T. 327	z, 125, ; 52 357, 823, L. J.	359 325
Briggs v. Sowry, 8 M. & W. 729; Brighton, Mayor of, v. Guardians	3; 73 11 I of B	L. J. C L. J. Exrighton,	h. 301 . 193 5 C. I	; 90 L.	T. 327	z, 125, ; 52 357, 823, L. J.	126
Briggs v. Thornton, '04, 1 Ch. 386 W. R. 278 Briggs v. Sowry, 8 M. & W. 729; Brighton, Mayor of, v. Guardians Q. B. 648 Bright-Smith, Re, 31 Ch. D. 314 W. R. 252	3; 78 11 I of B	L. J. C. righton,	h. 301 . 193 5 C. F h. 365	; 90 L. P. D. 36 ; 54 L.	T. 327	2, 123, ; 52 857, 823, L. J. 	359 325 571
Brigg v. Thornton, '04, 1 Ch. 386 W. R. 276 Briggs v. Sowry, 8 M. & W. 729; Brighton, Mayor of, v. Guardians Q. B. 648 Bright-Smith, Re, 31 Ch. D. 314 W. R. 252 Bristol, &c., Bread Co. v. Maggs,	3; 78 11 I of B	L. J. C. righton,	h. 301 . 193 5 C. F h. 365	; 90 L. P. D. 36 ; 54 L.	T. 327	2, 123, ; 52 857, 823, L. J. 	359 325 571
Brigg v. Thornton, '04, 1 Ch. 386 W. R. 276 Briggs v. Sowry, 8 M. & W. 729; Brighton, Mayor of, v. Guardians Q. B. 648 Bright-Smith, Re, 31 Ch. D. 314 W. R. 252 Bristol, &c., Bread Co. v. Maggs, L. T. 416; 38 W. R. 393	3; 73 11 I of B ; 55 44 C	L. J. C. L. J. Exrighton, L. J. Cl h. D. 61	h. 301 . 193 5 C. F h. 865	; 90 L. 2. D. 36 3. J. C. 3. J. C.	T. 327	2, 123, ; 52 857, 823, L. J. ; 34 ; 62	359 325 571
Briggs v. Snapter, 5 M. & W. Briggs v. Thornton, '04, 1 Ch. 386 W. R. 276 Briggs v. Sowry, 8 M. & W. 729; Brighton, Mayor of, v. Guardians Q. B. 648 Bright-Smith, Re, 31 Ch. D. 314 W. R. 252 Bristol, &c., Bread Co. v. Maggs, L. T. 416; 38 W. R. 393 Bristol (Corp. of) v. Westcott, 12	3; 73 11 I of B ; 55 44 C	L. J. C. L. J. Exrighton, L. J. Cl h. D. 61	h. 301 . 193 5 C. F h. 865	; 90 L. 2. D. 36 3. J. C. 3. J. C.	T. 327	; 125, ; 52 857, 823, L. J. ; 34 ; 62 	359 325 571 133 108
Briggs v. Thornton, '04, 1 Ch. 386 W. R. 276 Briggs v. Sowry, 8 M. & W. 729; Brighton, Mayor of, v. Guardians Q. B. 648 Bright-Smith, Re, 31 Ch. D. 314 W. R. 252 Bristol, &c., Bread Co. v. Maggs, L. T. 416; 38 W. R. 393 Bristol (Corp. of) v. Westcott, 12 841	3; 73 11 I of B ; 55 44 C	L. J. C. L. J. Exrighton, L. J. C. h. D. 61 D. 461;	h. 301 . 198 5 C. H h. 865 . 6; 59	; 90 L. 2. D. 36 3. L. J. 0 T. 117	T. 327 38; 49; T. 47 Oh. 472 ; 27 W	3, 123, 357, 323, L. J. 3, 34 3, 62 7. R.	359 325 571 133 108
Briggs v. Thornton, '04, 1 Ch. 386 W. R. 276 W. R. 276 Briggs v. Sowry, 8 M. & W. 729; Brighton, Mayor of, v. Guardians Q. B. 648 W. R. 252 Bright-Smith, Re, 31 Ch. D. 314 W. R. 252 Bristol, &c., Bread Co. v. Maggs, L. T. 416; 38 W. R. 393 Bristol (Corp. of) v. Westcott, 12 841 Bristol (Dean and Chapter of) v.	3; 73 11 I of B: ; 55 44 C	L. J. C. L. J. Exrighton, L. J. C. h. D. 61 D. 461;	h. 301 . 193 5 C. F h. 365 	; 90 L. 2. D. 36 3. L. J. 0 T. 117	T. 327 38; 49; T. 47 Oh. 472 ; 27 W	3, 123, 357, 323, L. J. 3, 34 3, 62 7. R.	359 325 571 133 108 495
Brigg v. Thornton, '04, 1 Ch. 386 W. R. 276 Briggs v. Sowry, 8 M. & W. 729; Brighton, Mayor of, v. Guardians Q. B. 648 Bright-Smith, Re, 31 Ch. D. 314 W. R. 252 Bristol, &c., Bread Co. v. Maggs, L. T. 416; 38 W. R. 393 Bristol (Corp. of) v. Westcott, 12 841 Bristol (Dean and Chapter of) v. 201; 5 Jur. N. S. 956; 7 W.	3; 73 11 I of B: ; 55 44 C	L. J. C. L. J. Exrighton, L. J. Cl h. D. 61 D. 461; es, 1 E. 07	h. 301 . 193 5 C. F h. 365 	; 90 L. 2. D. 36 3. 54 L. 4. J. 6 4. J. 6 4. J. 6 4. J. 6 5. 117	T. 327 T. 47 Ch. 472 ; 27 W 170 L. J. 6	2, 125, ; 52 857, 828, L. J. ; 34 ; 62 7. R. 0, 422, Q. B.	359 325 571 133 108
Briggs v. Snapter, 5 M. & W. Briggs v. Thornton, '04, 1 Ch. 386 W. R. 276 Briggs v. Sowry, 8 M. & W. 722; Brighton, Mayor of, v. Guardians Q. B. 648 Bright-Smith, Re, 31 Ch. D. 314 W. R. 252 Bristol, &c., Bread Co. v. Maggs, L. T. 416; 38 W. R. 393 Bristol (Corp. of) v. Westcott, 12 841 Bristol (Dean and Chapter of) v. 201; 5 Jur. N. S. 956; 7 W. Britain v. Rossiter, 11 Q. B. D. 1	3; 73 11 I of B ; 55 Ch. 2. Jon R. 3	L. J. C. L. J. Exrighton, L. J. Cl h. D. 61 D. 461; es, 1 E. 07 18 L. J.	h. 301 . 198 5 C. F h. 365 6; 59 41 L, & E. 4 Q. B.	; 90 L. 2. D. 36 3. 54 L. 4. J. 6 4. J. 6 4. J. 6 4. J. 6 5. 117	38; 49; T. 47 Ch. 472 ; 27 W 170 L. J. (2, 125, ; 52 857, 828, L. J. ; 34 ; 62 7. R. 9, 422, Q. B. 240;	359 325 571 133 108 495 343
Brigg v. Thornton, '04, 1 Ch. 386 W. R. 276 Briggs v. Sowry, 8 M. & W. 729; Brighton, Mayor of, v. Guardians Q. B. 648 Bright-Smith, Re, 31 Ch. D. 314 W. R. 252 Bristol, &c., Bread Co. v. Maggs, L. T. 416; 38 W. R. 393 Bristol (Corp. of) v. Westcott, 12 841 Bristol (Dean and Chapter of) v. 201; 5 Jur. N. S. 956; 7 W. Britain v. Rossiter, 11 Q. B. D. 1 27 W. K. 482	3; 73 11 I of B: ; 55 44 C	L. J. C. L. J. Exrighton, L. J. Cl h. D. 61 D. 461; es, 1 E. 07	h. 301 . 193 5 C. F h. 365 	; 90 L. 2. D. 36 3. 54 L. 4. J. 6 4. J. 6 4. J. 6 4. J. 6 5. 117	7. 327 7. 49 7. 47 7. 47 7. 47 7. 47 8. 170 9. L. J. 6	2, 125, 3, 52 357, 828, L. J. 3, 34 4, 62 7. R. 9, 422, Q. B. 240;	359 325 571 133 108 495
Briggs v. Snapter, 5 M. & W. Briggs v. Thornton, '04, 1 Ch. 386 W. R. 276 Briggs v. Sowry, 8 M. & W. 722; Brighton, Mayor of, v. Guardians Q. B. 648 Bright-Smith, Re, 31 Ch. D. 314 W. R. 252 Bristol, &c., Bread Co. v. Maggs, L. T. 416; 38 W. R. 393 Bristol (Corp. of) v. Westcott, 12 841 Bristol (Dean and Chapter of) v. 201; 5 Jur. N. S. 956; 7 W. Britain v. Rossiter, 11 Q. B. D. 1	3; 73 11 I of B ; 55 Ch. 2. Jon R. 3	L. J. C. L. J. Exrighton, L. J. Cl h. D. 61 D. 461; es, 1 E. 07 18 L. J.	h. 301 . 198 5 C. F h. 365 6; 59 41 L, & E. 4 Q. B.	; 90 L. 2. D. 36 3. 54 L. 4. J. 6 4. J. 6 4. J. 6 4. J. 6 5. 117	7. 327 7. 49 7. 47 7. 47 7. 47 7. 47 8. 170 9. L. J. 6	2, 125, ; 52 857, 828, L. J. ; 34 ; 62 7. R. 9, 422, Q. B. 240;	359 325 571 133 108 495 343

				P	AGE
British Electric Traction Co. v. Inland	Revenue Con	nmissio			
1 K. B. 441 British Mutoscope and Biograph Co. v.	Homer. '01.	1 Ch.	671 .	177, 70	178
British Mutoscope and Biograph Co. v. L. J. Ch. 279; 84 L. T. 26; 49 W.	R. 277; 17 T.	L. R. 2	13	5	245,
			:	285,	295
Britton, Re, 61 L. T. 52; 37 W. R. 621 Broadwood's S. E., Re, 7 Ch. 323; 41 L.	I Ch 849 · ·	 PR T. T	850 .	20	460
W. R. 458					18
Brocklehurst v. Lawe, 7 E. & B. 176; 26	3 L. J. Q. B. 10				325
Brocklington v. Saunders, 13 W. R. 46 Broggi v. Robins, 14 T. L. R. 439; 15 T	I. R 994		•••	97, 934	588
Bromley # Holden Moo & M 175				334,	273
Brook, Ex parte, 10 Ch. D. 100; 48 L. W. R. 255	J. Bk. 22;	89 L. T	. 458;	27	
W. R. 255	•••	•••	•••	70	
Brook v. Biggs, 2 Bing. N. C. 572 Brook v. Fletcher, 37 L. T. 100 Brooke, Re, 1 Morr. 82 Brooke v. Garrard, 3 K. & J. 608; 2 De	•••	•••		78,	
Brooke, Re, 1 Morr. 82	•••	•••		•••	
Brooke v. Garrard, 3 K. & J. 608; 2 De	G. & J. 62	•••		•••	
Brooke v. Hewitt, 3 Ves. 253 Brooke v. Noakes, 8 B. & C. 537		•••	:	 272	121 975
Brookes v. Drysdale, 3 C. P. D. 52; 37 I	. T. 467 ; 26	W. R. 8	331 1	272, 53,	154,
			7	156,	496
Brooks v. Humphreys, 5 Bing. N. C. 58 Brooks v. Tolputt, 1 T. L. R. 39	5; 2 Jur. 945				400 417
Broom v. Phillips, 74 L. T. 459		•••	•••	•••	428
Broomfield v. Williams, 1897, 1 Ch. 60	02; 66 L. J. C	h. 305 ;	76 L.	T.	
248; 45 W. R. 469		T O	 D 70	•••	139
243; 45 W. R. 469	Q. D. 429, 00	ш. э. Q	. D. 10	o ;	322
Brown v. Alabaster, 37 Ch. D. 490; 57	L. J. Ch. 255	; 58 L	. T. 26	6;	
36 W. R. 155 Brown v. Arundell, 10 C. B. 54; 20 L. J.		•••	•••	•••	139
Brown, Bayley & Dixon, Re, 18 Ch. D. 6	. C. P. 30 49 : 50 T. J. C	 h. 738 :	45 T.	т	259
347; 30 W. R. 5				•••	328
347; 30 W. R. 5 Brown v. Blunden, Skin, 121 Brown v. Burtinshaw, 7 D. & Ry. 603 Brown v. Cocking, L. R. 3 Q. B. 672; 9	•••	•••	•••	•••	340
Brown v. Burtinshaw, / D. & Ky. 603 Brown v. Cocking L. R 3 O. R 679 · 9	P. & S. 503 ·	97 T.	468, 4	180, R	487
250; 18 L. T. 560; 16 W. R. 933					578
250; 18 L. T. 560; 16 W. R. 933 Brown v. Crump, 1 Marsh. 567 Brown v. Glenn, 16 Q. B. 254; 20 L. J.			•••	•••	368
Brown v. Glenn, 16 Q. B. 254; 20 L. J. (Brown v. Metr. Counties, &c., Society, 1	Q. B. 205; 15	Jur. 18	9	 R	283
236 : 5 Jur. N. S. 1028	E. & E. 002;	20 1.	J. Q.	84,	250
Brown v. Newmarch, 40 J. P. 212	•••	•••	•••		
236; 5 Jur. N. S. 1028 Brown v. Newmarch, 40 J. P. 212 Brown v. Peto, '00, 1 Q. B. 346; '00, 2 (Q. B. 653; 69	L. J. Q	. В. 86	9;	07
88 L. T. 303	•••	•••	•••	əz,	, 07 334
Brown v. Shevill, 2 A. & E. 138	•	•••	•••	•••	258
Brown v. Storey, 1 M. & Gr. 117; 4 Jur.	319	•••	•••	•••	68
Brown a Trumper 26 Reav 11	•••	•••	100	148	167 844
Brown v. Watson, '04, 2 Ir. R. 219	•••	•••	•••		364
Browne v. Dunnery, Hob. 208	•••	•••	•••	•••	
Browne v. Joddrell, Moo. & M. 105	•••	•••		004	13
Browne v. Warner. 14 Ves. 156. 409	•••		79,	100.	149
Brown v. Storey, 1 M. & Gr. 117; 4 Jur. Brown v. Tighe, 2 Cl. & F. 396 Brown v. Trumper, 26 Beav. 11 Brown v. Watson, '04, 2 Ir. R. 219 Browne v. Dunnery, Hob. 208 Browne v. Joddrell, Moo. & M. 105 Browne v. Powell, 4 Bing. 230 Browne v. Warner, 14 Ves. 156, 409 Browning v. Dann, Bull. N. P. 81		• <u>•</u> •	•••	···	284
Browning v. Dann, Bull. N. P. 81 Bruce v. Marquess of Ailesbury, '92, A. 37; 67 L. T. 490; 41 W. R. 318; 5	C. 356; 62 L.	J. Ch.	95;1	R.	107
37; 67 L. T. 490; 41 W. R. 318; 5 Brudnel's Case, 5 Rep. 9a	7 J. P. 104	•••	•••	•••	149
Rendrall a Dohowto 9 Wile 149					77
Bruner v. Moose, '04, 1 Ch. 305; 89 1	L. T. 738; 52	W. R.	295 :	20	400
T. L. R. 125 Brunskill v. Atkinson, 29 Sol. Journ. 29 Bryan v. Weatherhead, Cro. Car. 17			•••	104, 	409 589
Bryan v. Weatherhead, Cro. Car. 17	•••	•••		•••	
•					

						_	
Bryant v. Hancock & Co., 1898, 1	ов	716 -	67 T	I O. B	. 507 •		AGE
L. T. 397: 46 W. R. 387: i	n H.	L. '99), A. C	. 442;	68 L.	J.	
O. B. 889 : 81 L. T. 96 : 15 T.	. L. R.	. 490	•••	•••		364,	415
Brydges v. Lewis, 3 Q. B. 603; 11 Buccleugh (Duke of) v. Wakefield,	L. J.	Q. B.	268	•••	•••		444
Buccleugh (Duke of) v. Wakefield,	L. R.	4 H. L	. 377	•••	•••	•••	144
Buckinghamshire (Farl of) a Drur	 ₇ 9 Ti	den R	٠	•••	•••	•••	190
Buck v. Nurton, 1 B. & P. 53 Buckinghamshire (Earl of) v. Drur Buckland v. Butterfield, 2 Br. & B Buckland v. Papillon, 2 Ch. 67; 3 15 L. T. 378; 15 W. R. 92	, 54			348	3. 518.	519.	525
Buckland v. Papillon, 2 Ch. 67;	36 L	J. Ch.	81; 19	2 Jur. 1	V. S. 9	92;	
15 L. T. 378; 15 W. R. 92 Buckle v. Fredericks, 44 Ch. D. 24	•••	•••		•••	100,	156,	455
Buckle v. Fredericks, 44 Ch. D. 24	4;62	L. T. 8	384; 38	3 W. R.	742		360
Buckler's Case, 2 Rep. 55 b	•••	•••	•••	•••	•••	145,	148 88
Buckley, Re, 35 Beav. 449 Buckley v. Buckley, 1 T. R. 647 Buckley v. Pirk, 1 Salk. 316 Buckley v. Taylor, 2 T. R. 600 Buckworth v. Simpson, 1 C. M. & S.	•••	•••	•••	•••	•••	•••	576
Buckley v. Pirk, 1 Salk. 316		•••	•••	•••	•••	452,	458
Buckley v. Taylor, 2 T. R. 600	•••	•••	•••	•••	221,	249,	324
Buckworth v. Simpson, 1 C. M. &	R. 834	···			97,	433,	452
Budd v. Marshall, 5 C. P. D. 481;	90 L.	J. Q. 1	3. 24 ;	42 L. T	. 793 ;	29	
W. R. 148 Budd-Scott v. Daniell, '02, 2 K. B		 71 T.	j k	R 708 ·	87 T.	388, T	981
392 : 51 W. R. 134 : 18 T. L.	R. 67!	5	•••			397.	400
Bull, Ex parte, 18 Q. B. D. 642; 5	6 L. J	I. Q. B.	270;	56 L. T	. 571 ;	35	
W. R. 455			•••	•••		•••	280
Bullen v. Denning, 5 B. & C. 142	•••			•••	•••	142,	
Bullock v. Dommitt, 6 T. R. 650		•••	···	•••	•••	•••	337
Bulwer v. Bulwer, 2 B. & A. 470 Bunch v. Kensington, 1 Q. B. 679	· 10 L	. J. O.	B. 203	. 5 Jur	. 461		261
Bunn v. Harrison, 3 T. L. R. 146							355
Bunn v. Harrison, 3 T. L. R. 146 Bunting v. Sargent, 13 Ch. D. 330	; 49 I	. J. Ch	. 109;	41 L. 7	°. 643 ;	28	
W. R. 123	• • •	•••				39,	572
Burchell v. Clark, 2 C. P. D. 88;	₩ Ъ						101
W. R. 334 Burchell v. Hornsby, 1 Camp. 360	•••	•••	•••	•••	•••	145,	~
Burdett v. Withers, 7 A. & E. 136	; 1 Ju	ır. 514		•••	•••	•••	338
Burleigh v. Stubbs, 5 T. R. 465	·	•••			•••	•••	180
Burling v. Read, 11 Q. B. 904	•••	•••	•••	•••	•••	•••	570
Burn v. Phelps, 1 Stark. 94		•••	•••		•••	•••	237
Burne v. Cambridge, 1 Moo. & R. ! Burne v. Richardson, 4 Taunt. 720		•••	•••	•••	•••	•••	64 248
Burnet v. Mann, 1 Ves. Sen. 156		•••	•••		•••	•••	15
Burnett v. Lynch, 5 B. & C. 589		•••	•••	•••	•••	397,	
Burns v. Bryan, 12 App. Cas. 184	•••	•••	•••	•••	•••	160,	
Burrell v. Jones, 3 B. & A. 47		; ** ,	۵i ۵۷		···.	•••	298
Burrow v. Scammell, 19 Ch. D. 17							117
30 W. R. 310 Burrows v. Gradin, 1 D. & L. 213	 : 12 L	. J. Q.	B. 333	···	224.	227.	252
Burt v. Haslett, 11 C. B. 162, 89	3;25	L. J.	C. P. 2	95; 2	Jur. N	. S.	
974; 4 W. R. 679 Burt v. Moore, 5 T. R. 329 Burton v. Barclay, 7 Bing. 745 Burton v. Dickenson, 17 L. T. 264 Burtsell v. Bianchi, 65 L. T. 678		•••		•••	•••		529
Burt v. Moore, 5 T. R. 329	•••	•••	•••	•••		400	406
Burton r. Barclay, 7 Bing. 745	•••	•••	···	•••	145,		
Burtsell v. Bianchi, 65 L. T. 678	• • • •	•••	•••	•••	•••	•••	130
Bury v. Thompson, 1895, 1 Q. H	3. 231	696;	64 L.	J. Q. I	3. 500 ;	72	
L. T. 187; 43 W. R. 338	•••	•••	•••	•••	•••	•••	475
Buszard v. Capel, 4 Bing. 137, 6 I	ъ., 150);8B	. & C.	141	•••	218,	270
Dute r. Grindall, 1 1. K. 338	•••	•••		•••		•••	38/
Bute (Marquis of) v. Thompson, 18 Butler and Barker's Case, 3 Rep. 2		40	o/ ; 14	L. J. E	yə	•••	205 19
Butler v. Goundry, 4 T. L. R. 711			•••	•••	•••	•••	355
Butler v. Mulvihill, 1 Bligh, 137	•••	•••	•••	•••	•••	•••	74
Butler v. Swinnerton, Cro. Jac. 65	6	•••	•••	•••	•••	•••	403
Buttermere v. Hayes, 5 M. & W. 4	156	m 100		 W D 0		•••	426
Buxton, Ex parte, 15 Ch. D. 289; Buxton v. Lister, 3 Atk. 383	43 L.); 29 \ 	W. R. 2	8	•••	458 116
Zuzwii v. Miswi, v Ava. 000	•••	•••	•••	•••		2	110
					~ 4		

						2102
Byrne v. Acton, 1 Bro. P. C	. 186				•••	PAGR 55
Byrne v. Brown, 22 Q. B.	D. 657;	58 L. J.	Q. B.	410;	60 L.	T.
651		•••	•••	•••	•••	418
Caballero v. Henty, 9 Ch. W. R. 446	447 ; 48 L					
Cadby v. Martinez, 11 A. &	E. 720	•••	•••	•••	•••	468, 482
Caddick, Re, 7 W. R. 334		•••	•••	•••	•••	5
Cadle v. Moody, 30 L. J. E.	x. 385	•••	•••	•••	•••	485
Cadogan Estate Co., Lim.,	Re, 78 L. T	. 387	•••	•••	•••	153
Caldwell v. McCallum, 4 F.	371	•••	•••	•••	•••	533
Calvin's Case, 7 Rep. 1			•••	•••	•••	20
Calverley's Settled Estates,	, Re, 78 L.	J. Ch.	25 ; 89	LT	. 500;	52
W. R. 206	 J 410	•••	•••	•••	•••	42
Calvert v. Jolliffe, 2 B. & A Calvert v. Sebright, 15 Bea		•••	•••	•••	•••	319, 320 408
Camden v. Batterbury, 5 C.	. B. N. S. 8	98 ; 7 C.	B. N.	S. 864	; 28 L	. J.
C. P. 187, 335; 5 Jur.	N. S. 027,	1405	•••	•••	•••	80, 96
Campbell v. Hooper, 3 Sm.	& G. 153	•••	•••	•••	•••	13
Campbell v. Leach, 2 Amb.	740	T. D. 9	шт.	985	•••	55, 56 58
Campbell v. Leach, L. R. 2 Campbell v. Lewis, 3 B. &	A. 892	п. п. э	п. п.	200	•••	435
Campbell v. Loader, 3 H. &	C. 520 ; 3	4 L. J. E	x. 50	•••	•••	577
Campbell v. Wenlock, 4 F.	& F. 716					356
Cannan v. Hartley, 9 C. B.	634 ; 19 L.	J. C. P.	323;	14 Jur.	577	487
Cannock v. Jones, 3 H. L.	. C. 700; 3	Ex. 933	s; 5 10	id. 718	15 L	. J. 949 949
Ex. 204 Cannon Brewery Co., Lin	n n Nasi	h. 77 Ta	T. 64	8 · 14		342, 343 R.
158						465
Cannon v. Villars, 8 Ch. D.	415; 47 I	. J. Ch.		I1 88	. 989 ;	26
W. R. 751		•••	•••	•••	•••	140
Canterbury v. Keg., 12 L. J	KO 281	•••	•••	•••	•••	333
Canterbury v. Reg., 12 L. J Capel v. Buszard, 6 Bing. 1 Capital and Counties Bank	v. Rhodes.	'03. 1 Ch	. 631 :	72 L. J	 J. Ch. 3	36:
88 L. T. 255; 51 W. F. Carden v. Tuck, Cro. Eliz. Cardigan (Lord) v. Armitag Cardwell v. Lucas, 2 M. & Carlisle (Mayor of) v. Blam	R. 470 ; 19 '	Г. L. R.	280	•••		484, 485
Carden r. Tuck, Cro. Eliz.	89	•••	•••	•••	•••	135
Cardigan (Lord) v. Armitag	e, 2 B. & C	. 197	•••	•••	•••	142, 144
Carlisle (Mayor of) v. Blam	W. III ima 8 Fast /	197	•••	•••	•••	184
Carlinla Cata Co a Musa E	Prog fr Co	67 T. T	Ch K	2 • 77 '	T. TO K	15 •
46 W. R. 107 Carlton v. Bowcock, 59 L. Carnarvon (Earl of) v. Ville Carpenter v. Colins, Yelv. 7 Carpenter v. Cresswell, 4 B. Carpenter v. Parkov 3 C. R.						184
Carlton v. Bowcock, 59 L.	Т. 659	•••	•••	•••	•••	78
Carnarvon (Earl of) v. Ville	bois, 13 M.	& W. 31	3	•••	•••	490
Carpenter v. Colins, Yelv. 7	ing 400	•••	•••	•••	•••	420, 464
Carpenter v. Parker, 8 C. B.	N. S. 206	: 27 L. J	I. C. P.	78	69.	238, 403
Carr v Anderson, '03, 1 Cl	h. 90 : 2 CH	. 279: 7	2 L.J.	Ch. 5	0, 534;	159 238, 403 87
L. T. 440; 88 <i>lb</i> . 508	; 51 W. K.	165, 465	•••	•••	•••	461
						200, 215
Carr v. Lynch, '00, 1 Ch. (W. R. 616			5±0; 6	2 L. I	. 301 ;	109
Carruthers, Re, 2 Man. 172		•••	•••	•••		460
Carstairs v. Taylor, L. R. 6	Ex. 217; 4	0 L. J.	Ex. 129	; 19	W. R.	
						885
Carter, Ex parte, 8 Ch. D.	731; 39 L.	T. 185;	27 W.	K. 106	• • • •	455
Carter and Claycole's Case,	i Leon. 306 a	• •••	•••	•••	•••	25 23 3, 2 34
Carter v. Carter, 5 Bing. 40 Carter v. Cummins, 1 Cas.	in Ch. 84	•••	•••	···	•••	235
Carter r. Madgwick, 3 Leon	n. 339		•••	•••	•••	145
Carter v. Salmon, 43 L. T.	490	•••		•••	•••	245
Carter v. Silber, 1892, 2 Ch	. 278; 61 L	. J. Ch.	401; 6	6 L. T	. 478	7, 9
Carter v. Williams, 9 Eq. W. R. 598		. J. Ch.				
W. A. 393		•••		•••		220

					P	AGE
Cartwright, Re, Avis v. Newman, 41 Ch.	D. 532	; 58 L	. J. C	h. 590;		
L. T. 891; 37 W. R. 612	•••	•••	•••	•••	•••	352
Cartwright v. Forman, 7 B. & S. 243 Cartwright v. Miller, 36 L. T. 398 Cartwright v. Smith, 1 Moo. & R. 284 Cary v. Cary, 10 W. B. 669 Cary v. Matthews, 1 Salk. 191 (note)	•••	•••		•••		298
Cartwright v. Miller, 36 L. T. 398	•••	•••	•••	•••	•••	108
Cartwright v. Smith, 1 Moo. & R. 284	•••	•••	•••	•••		272
Cary v. Cary, 10 W. R. 669	•••	•••			•••	585
Cary v. Matthews, 1 Salk. 191 (note)	•••	•••	•••	•••		281
Casey v. Hellyer, 17 Q. B. D. 97; 55 L	. J. Q.	B. 207	: 54	L. T. 10	03:	-•-
34 W. R. 337	•••	•••				575
Costellain a Decetor 11 A D D 900	: 52 L.	J. O. 1	B. 366	: 49 T.	T.	
29: 31 W. R. 557				,		382
Castleman v. Hicks Car. & M. 266					292,	
Catt v Tourle 4 Ch 654	•••				,	488
Cattle v Gamble & Bing N C 46 : 2 Ju	nr. 922			•••		2
Cattley a Arnold 1 J & H 651				•••	•••	93
Cavalairo a Punet AR & R 537	•••	•••	•••	•••		104
29; 31 W. R. 557	1 0 1	 2 . K7K •	45 T.	T 948	•••	108
Cayley v. Walpole, 89 L. J. Ch. 609; 22	J. Q. 1	000 · 19	2 W I	789		103
Cooil a Innedon 54 I T 419	ш. т	, 10	, w. I	. /02	•••	46
Cecil v. Langdon, 54 L. T. 418 Chadwick v. Broadwood, 3 Beav. 308	•••	•••	•••	•••	•••	
Chadwick v. Droadwood, o Deav. 500	T	 T ID.	- 1 <i>77</i>	. 10 T	m.	578
Chadwick v. Marsden, L. R. 2 Ex. 285); 30 I	. J. E.	. 1//	; 10 L		140
666; 15 W. R. 964	T ''' D	000.		***	•••	142
Chadwick v. Clarke, 1 C. B. 700; 14 L.	J. C. P	. 233 ;	y Jur.	089		123
Chaloner v. Bolckow, 8 App. Cas. 933	; 47 L.	J. Q.	B. 562	; 89 1	. т.	
134; 26 W. R. 541	•••	•••	•••	•••	•••	883
Chamberlayne v. Collins, 70 L. T. 217		•••	•••	•••	•••	517
4:hambara + Kingham 10 (h l) 748 • 4	IX I	Ch. 16	9;39	L. T. 47	72;	
27 W. R. 289 Chancellor v. Poole, 2 Dougl. 764 Chancellor v. Webster, 9 T. L. R. 568 Chandler v. Doulton, 3 H. & C. 553;	•••	•••	•••	•••	484,	
Chancellor v. Poole, 2 Dougl. 764	•••	•••	•••	•••	•••	440
Chancellor v. Webster, 9 T. L. R. 568	•••	•••	•••	•••	•••	245
Chandler v. Doulton, 3 H. & C. 553;	84 L.J	. Ex. 8	9;11	Jur. N.	. S.	
286; 11 L. T. 639	•••	•••	•••		•••	287
Chandler v. Webster, '04, 1 K. B. 493;	90 L.	Г. 217	; 52 V	V. R. 29	90;	
20 T. L. R. 222	•••	•••	•••	•••	•••	162
Chandler's Wiltshire Brewery Co. and Lo. K. B. 569; 72 L. J. K. B. 250; 88	ndon C	ounty C	ouncil	, Re, '08	3, 1	
K. B. 569; 72 L. J. K. B. 250; 88	L. T.	271 : 5:	ı W. 1	R. 578 ;	67	
I P 110 . 10 T T. P 988 . 1 T. C	1 12 OA	α.		•••	•••	435
Chandos v. Talbot, 2 P. Wms. 601 Channon v. Patch, 5 B. & C. 897			•••	•••	•••	378
Channon z. Patch. 5 B. & C. 897	•••		•••	•••		379
Chaplain v. Southgate, 10 Mod. 384		•••		•••	•••	399
Chaplin v. Reid. 1 F. & F. 315		•••	•••	•••	•••	881
Chaplin v. Reid, 1 F. & F. 315 Chapman, Re, 10 T. L. R. 449						323
Chanman a Rasaham Q () R 799 : 19	L.I.O.	B. 42	: 6 Jn	P GAR	•••	249
Chapman v. Bluck, 4 Bing. N. C. 187; Chapman v. Chapman, Cro. Car. 76 Chapman v. Towner, 6 M. & W. 100 Chappell v. Gregory, 34 Beav. 250 Chappell v. Mason, 10 T. L. R. 404 Charlewood v. Bedford (Duke of), 1 Atk.	2 Jun 1	208	,		80,	
Channian a Chanman Cro Car 78	2 0 ui. 2		•••	•••	00,	221
Chanman a Towner & M & W 100	•••	•••	•••	•••	79	, 94
Channell a Gracery 84 Rear 250	•••	•••	•••	•••		884
Chappell a Mason 10 T [P 404	•••	•••	•••	•••	•••	136
Charlemand a Dodford (Dules of) 1 Atla	407	•••	•••	•••	•••	110
Charlewood v. Dediord (Duke of), 1 Atk.	9 <i>01</i> 00.71	T" 7		. 00 T	Ť	110
Charrington & Co. v. Camp, '02, 1 Ch. 3	00;11	L. J. C	п. 190	, ou 11.	1.	004
15; 18 T. L. R. 152	D 410	•••		•••	•••	864
Charsley v. Jones, 53 J. P. 280; 5 T. L.	R. 412	•••	•••	•••	•••	856
Chattock v. Muller, 8 Ch. D. 177		T	**		•••	119
Chawner's Settled Estate, Re, 1892, 2 C	n. 192	; 61 17	. J. C	1. 331;		40
L. T. 745; 40 W. R. 538	•••				:::	43
Chaytor, Re, '00, 2 Ch. 804; 69 L. J.	~ .				16	
T. L. R. 546	Ch. 8		W. I			
	•••	•••	•••	•••	•••	198
Chedington's Case, Rector of, 1 Rep. 14	•••	•••				146
Cheetham v. Hampson, 4 T. R. 318	•••	•••	•••	•••	•••	146 375
Chedington's Case, Rector of, 1 Rep. 146 Cheetham v. Hampson, 4 T. R. 318 Cherry v. Heming, 4 Ex. 631	8 b	•••	•••	 	 190	146 375
Checington's Case, Rector of, 1 Rep. 140 Checkham v. Hampson, 4 T. R. 318 Cherry v. Heming, 4 Ex. 631 Cheshire Lines Committee v. Lewis, 5	8 b	•••	 . 121 :	 124, 44 L.	 129, T.	146 375 182
Cheshire Lines Committee v. Lewis, 5	8 b 0 L . J	 . Q. B	 . 121 :	 124, 44 L.	 129, T.	146 375 182
Cheshire Lines Committee v. Lewis, 5	8 b 0 L . J	 . Q. B	 . 121 :	 194	 129, T.	146 375 182

Chatham a Willi	amaan A	Foot	480						AGE
Chetham v. Willichidley v. West I Chilcote v. Yould Child v. Chamber Child v. Stenning	Iam Chu	rchwa	rdens.	32 I. T	486	•••	•••	213,	215 514
Chilcote v. Yould	on, 3 E.	& E. 7	; 29 L	. J. M.	C. 197	•••	•••	•••	579
Child v. Chamber Child v. Stenning	lain, 5 B	. & Ad	l. 1049	_ •••	•••				307
Child v. Stenning	, 11 Ch.	D. 82	; 48 L	. J. Ch.	392;				
W. R. 462 Chipperfield v. Ca Chippock v. Marc	79	1 ''r	407	•••	•••	•••	•••	•••	405
Chipperfield v. Ca Chinnock v. Marc 12 L. T. 251 Christ's Hospital	hioness o	f Elv.	4 D	T & S	888 · 11	Jur	N 8	820 ·	105
									104
12 L. T. 251 Christ's Hospital Christy v. Tanco	v. Harril	d, 2 M	[. & Gr	. 707	•••	•••	•••	•••	387
Christy v. Taner	red, 7 1	4. &	W. 12	7;91	I. &	W. 4	38;4	Jur.	
1064 Church v. Brown, Church v. Imperis Church r. Maxted	15 Vec	0K0	•••	•••	154	152 1	00 410	148,	564
Church v. Imperis	al (Lag T.i	abt Co		# F 8	109, . 18	100, 1	00, 413	, 410,	99
Church r. Maxted	. 67 L. J	O. B.	823	w 11. 0	****	•••	•••	•••	233
Churcher v. Marti	n, 42 Ch	. Ď. 31	2;58	L. J. C	h. 586;	61 L.	T. 118	; 37	
W. R. 682	•••		•••	•••			•••		39
Churchill v. Evan	s, l Tau	nt. 529	440.5	T	or	,	•••		875
Churchward v. Io	hneon 5	& N.	440; 2 898	ю L. J.	Ex. 35	4	•••	•••	330 265
Churchward v. For Churchward v. Jo. Civil Service Co-	operativ	e Socie	etv v.	General	Steam	Navi	gation	Co	200
'03, 2 K. B.	756; 72	L. J. 1	K. B. 8	33 ; 89	L. T.	429;	52 W	. R.	
									162
Civil Service Musi 484; 80 L. T Clanricarde v. Ryc Clapham v. Drape Claridge v. Macke Clark, Re, 1 Ch. 2 W. R. 45 Clark v. Calvert, 2 Clark v. Crownsha Clark v. Gaskarth, Clark v. Glasgow Clark v. Smith, 9 Clarke v. Arden, 1 3 W. R. 444 Clarke v. Fuller, 1	cal Instr	ument	Associ	ation v.	White	man, 6	8 L. J.	Ch.	110
484; 80 L. 1	. 685	1 I. D		. •••	•••	•••	•••	•••	11Z
Clapham v. Drape	er. C. & 1	E. 484	. 90	•••	•••	•••	•••	•••	242
Claridge v. Macke	nzie, 4 M	4. & G	r. 143;	11 L.	J. C. P.	72	•••	77,	248
Clark, Re, 1 Ch. 2	92	•••	•••	•••		•••	•••	•••	5
Clark v. Adie, 2	Арр. Са	s. 42 3	; 46 l	L. J. C	h. 598	; 37 I	. T. 1	; 26	
W. K. 45	 • Waa 0		•••	•••	•••	•••	•••	057	76
Clark v. Carvert, a	о моо. у w 9 R	₽ Ad	804	•••	•••	•••	•••	201,	531
Clark v. Gaskarth.	8 Taun	t. 481		•••	•••		•••	257.	261
Clark v. Glasgow	Ass. Co.,	1 Mac	q. 668	•••	•••	•••	•••	•••	337
Clark v. Smith, 9	C. & F.	126	. ··· .	~		···· ,		•••	55
Clarke v. Arden, 1	16 C. B.	227; 2	4 L. J	. C. P.	162; 1	Jur.	N. S. 7	710;	20
O W. R. 444 Clarke a Fuller 1	AC R	N S	 94 · 19	w R	871	•••	108	107	108
3 W. R. 444 Clarke v. Fuller, 1 Clarke v. Holford Clarke v. Millwall	2 C. &	K. 540		***		•••		221.	249
Clarke v. Holford Clarke v. Millwall	Dock C	o., 17	Q. B. I). 494;	55 L.	I. Q.]	B. 378	; 54	
L. T. 814; 34	4 W. R.	698	•••	•••	•••	•••	•••	•••	260
L. T. 814; 3e Clarke v. Moore, 1 Clarke v. Roche, 3	l Jo. & L	at. 723	3	T"^	D 147	. 97	T 70	, 227,	490
26 W. R. 112	у Q . Б. Д	. 170 ;	47 L.	J. Ų.	D. 147	; 01	ы. т. (000;	180
26 W. R. 112 Clarke v. Royston Clarke v. Thornto	e. 13 M.	& W.	752	•••	•••	•••	•••	369.	
Clarke v. Royston Clarke v. Thornto 35 W. R. 603	n, 35 Ch	. D. 80	7; 56	L. J. (ጉ ያለዓ	. KR 1	r. ጥ 🤉	04 .	
35 W. R. 603 Clarke v. Westrop Clarke v. Yorke, & Clarkington, In tl Clay v. Rufford, 5 Clayton's Case, 5 Clayton and Barel 72 L. T. 764;		- ***	•••			•••	•••	•••	47
Clarke v. Westrop	e, 18 C.	B. 765	; 25 L	. J. C.	P. 287	7 D	872	, 534,	536
Clarkington In the	he goods	л. 32 of 9.5	; 4/ L	. 1. 30. Tr 38	l; ol n	7. IV.	02	•••	190
Clay v. Rufford. 5	De G. &	Sm. 7	'68		• • • • • • • • • • • • • • • • • • • •	•••	•••	•••	58
Clayton's Case, 5	Rep. 1a	•••	•••	•••	•••	•••	•••	147,	469
Clayton and Barcl	ay's Con	tract,	Re, 189	95, 2 Cl	h. 212;	64 L.	J. Ch. 6	315;	
72 L. T. 764	43 W.	R. 549	•••	•••	•••	•••		105	455
Clayton v. Diakey	, 0 I. N.	ይ _ው ር	41	•••	•••	•••	94	, 125, 2 70	179
72 L. T. 764; Clayton v. Blakey Clayton v. Burten Clayton v. Illingw Clayton v. Gregson Clayton v. Leech, Clayton v. Smith, Clego v. Handa, 4.	orth. 10	Hare	451	•••	•••	•••	••• •	•••	117
Clayton v. Gregson	n, 6 N. 8	M. 69	94;5	A. & E.	E02		•••	•••	128
Clayton v. Leech,	41 Ch. I	. 103	; 61 L.	T. 69	; 37 W.	R. 66	33	•••	114
Clayton v. Penson	, W. N.	1878,	158	•••	•••	•••	•••	•••	205
Clear n Hands 4	11 T. L.	K. 37	4 50 T	T Ch	177 . 80	т. т	509	. 98	2AT
Clegg v. Hands, 4 W. R. 433	• сп. р.	000;	UB 11.	v. CH. 9	, 02	36	5. 366	433.	438
			•••				, ,	,	

Clegg v. Rowland, 2 Eq. 160; 35 W. R. 530	L. J.	Ch.	396 ; 1	4 L. T.	217 ; 52,	14	919
Clemence, Ex parte, 23 Ch. D. 154	; 52	L. j. c	h. 472	; 48 L	. Т. 3	08:	
31 W. R. 397 Clements v. Lambert, 1 Taunt. 20: Clements v. Matthews, 11 Q. B. D. Clements v. Welles, 1 Eq. 200; 35 Clements v. Welles, 1 Eq. 200; 35	κ	•••	•••	•••	•••	•••	197
Clements v. Laurbert, 1 1aunt. 20:	9	ro T	T 0 B	770	•••	•••	107
Clements v. Maturews, 11 Q. D. D.	T T	OL 04	J. W. E). //4 r m e/			417
Clements v. Welles, 1 Eq. 200; 35	ъ. ј.	Cn. 20	5; 13	D. T. 94	10	410,	417
Clemel . D Arenberg, C. & E. 42	•••	•••	•••	•••	•••	•••	00
Cleaner v. Read, / Taunt. 50	•••	•••	•••	•••	•••	•••	230
Clerk v. Wright, I Atk. 12		••••			···		107
Clench v. D'Arenberg, C. & E. 42 Clennel v. Read, 7 Taunt. 50 Clerk v. Wright, 1 Atk. 12 Clifford (Lord) v. Watts, L. R. 5 C.	P. 57	/; 4 0.	L. J. C.	P. 36	; zz L.	T.	000
717; 18 W. R. 925 Clifton v. Walmesley, 5 T. R. 564 Climie v. Wood, L. R. 3 Ex. 257;	•••	•••	•••	•••	•••	205,	
Ciliton v. Walmesley, 5 T. R. 564	•••		··· -		•••	158,	205
Climie v. Wood, L. R. S Ex. 257;	4 1000	i. 328	; 38 L	J. Ex	. 228 ;	20	
C: L. T. 1012	•••	•••		514, 510	5, 518,	521,	527
Clinan v. Cooke, I Sch. & Lef. 22	<u> </u>			70), 107,	108,	110.
L. T. 1012	L. T.	249;	22 W. I	K. 512			241
	5;55	L. J. (Ch. 107	7; 53 L	. T. 73	38;	
34 W. R. 169	•••	•••	•••	•••	•••	•••	47
Clithero v. Higgs, Sir W. Jones, 3	88	•••	•••	•••	•••	•••	144
Clive v. Beaumont, 1 De G. & S. 3	97	•••	•••	•••	•••	•••	103
Cloake v. Hooper, Freem. 122	•••	•••	•••	•••	•••	•••	404
Cloete, Re, 65 L. T. 102	•••	•••	•••	•••	•••	•••	266
Close v. Wilberforce, 1 Beav. 112	•••	• • • •	•••	•••	•••	•••	432
Clow v. Brogden, 2 M. & Gr. 39	•••	•••	•••	•••	•••	•••	417
Clithero v. Higgs, Sir W. Jones, 3: Clive v. Beaumont, 1 De G. & S. 3 Cloake v. Hooper, Freem. 122 Cloete, Re, 65 L. T. 102 Close v. Wilberforce, 1 Beav. 112 Clow v. Brogden, 2 M. & Gr. 39 Clowes v. Hughes, L. R. 5 Ex. 160);39]	L. J. I	Ex. 62	; 22 L.	T. 10	03;	
18 W. R. 459 Clun's Case, 10 Rep. 127a	•••	•••	•••	•••	•••	146,	249
Clun's Case, 10 Rep. 127a	•••	•••	•••	22	l, 222,	223,	240
18 W. R. 459 Clun's Case, 10 Rep. 127a Coal Consumers' Association, Re, 4 L. T. 729; 25 W. R. 300	l Ch. 1	D. 625	; 46 L.	J. Ch.	501;	35	
L. T. 729; 25 W. R. 300	•••	•••	•••	•••	•••	326,	327
Coates v. Collins, L. R. 7 Q. B. 14	4; 41	L. J.	Q. B. 9	0;26 I	T. 18	84;	
20 W. R. 187 Coates v. Kenna, Ir. R. 6 Eq. 401 Coatsworth v. Johnson, 55 L. J. Q	•••	•••	•	•••	•••	•••	149
Coates v. Kenna, Ir. R. 6 Eq. 401	•••	•••	•••	•••	•••	•••	447
Coatsworth v. Johnson, 55 L. J. Q	. B. 25	20:54	L. T.	520	•••	92.	509·
Cobb v. Carpenter, 2 Camp. 13 n. Cobb v. Stokes, 8 East, 358 Cochrane v. Willis, L. R. 1 Ch. 58	•••	•••	•••	•••	•••		330-
Cobb v. Stokes, 8 East, 358			1	148, 481	, 566,	567,	568
Cochrane v. Willis, L. R. 1 Ch. 58	: 35 L	. J. Cl	ı. 36 : :	13 L. T	. 339 ;	14	
W. R. 19				•••	•••	•••	120
	L. 165						141·
Cocker v. Musgrove, 9 O. B. 223:	15 L.	J. Q. 1	B. 365 :	10 Jui	. 922		319
Cocking v. Ward, 1 C. B. 858: 15	L. J.	C. ř.	245	•••		•••	
Cockson v. Cock, Cro. Jac. 125	•••	•••	•••			•••	
Codd v. Brown, 15 L. T. 536	•••	•••	•••	•••	•••	•••	536 -
Coe v. Clay, 5 Bing, 440		•••	***			398,	404
Coggan v. Warwicker, 3 C. & K. 4	0	•••		•••	•••	•••	92
Coghil v. Freelove, 3 Mod. 325	•••		•••			•••	454
Cockrane v. M'Cleary, Ir. R. 4 C. Cocker v. Musgrove, 9 Q. B. 223; Cocking v. Ward, 1 C. B. 858; 15 Cockson v. Cock, Cro. Jac. 125 Codd v. Brown, 15 L. T. 536 Coe v. Clay, 5 Bing. 440 Coggan v. Warwicker, 3 C. & K. 4 Coghil v. Freelove, 3 Mod. 325 Cohen v. Tannar, '00, 2 Q. B. 609 48 W. R. 642	: 69 I	. J. Q	B. 904	: 83 T	. T. (84 :	
48 W. R. 642	,				400.	403.	449-
Coker v. Guy, 2 B. & P. 565	•••	•••		•••			128
Colbron v. Travers, 12 C. B. N. S.			J. C. P				386-
Colchester (Mayor of) n. Lowten 1	V &	B 226				,	21
Cole's Case. 1 Salk. 196		D. 22 0					435
Cole n Surv Latch 264					151.	152.	220
Cole v. Greene 1 Lev. 200 (Cole v.	Forth	1 Mc	ر <u>۱۵۵</u>	•••	101,	,	850
Cole v. West London &c. Ry. Co.	97 B	loav 9	19	•••	•••		135
Cole w White cited 1 Br C C n	1,400	cav. 2	14	•••	•••	•••	112
Colbron v. Travers, 12 C. B. N. S. Colchester (Mayor of) v. Lowten, 1 Cole's Case, 1 Salk. 196 Cole v. Sury, Latch. 264 Cole v. Greene, 1 Lev. 309 (Cole v. Cole v. West London, &c., Ry. Co. Cole v. White, cited 1 Br. C. C., p. Colebeck v. Girdlers' Co., 1 Q. B. L. T. 350; 24 W. R. 577 Colegrave v. Dias Santos, 2 B. & C.	. 1 08	94 • 4	5 T. T	0 B	225 ·	84	4
T. T 950 · 94 W D 577	. <i></i> . 2	~×; 4:	. 11. U	. ч. р.	,	- I	225.
Colegrave w Dies Santos 9 B & C	78	•••	•••	•••	•••	•••	141
L. T. 350; 24 W. K. 577 Colegrave v. Dias Santos, 2 B. & C Coleman v. Bathurst, L. R. 6 Q. F		. 40 T	T M	C 181	94 T	T	
426; 19 W. R. 848	, ooo ;	, 1 0 11.	U. BI.	J. 101			40%
Coleman a Coleman 70 T. T. RR	•••	•••		•••	•••	•••	180
Coleman v. Coleman, 79 L. T. 66 Coleman v. Foster, 1 H. & N. 37	•••	•••	•••	•••	•••		87
Color of Transhist O Ver 242	•••	•••	•••	•••	•••	•••	70

Colley v. Streeton, 2 B. & C. 278 847, 417					_	
Collen v. Gardner, 21 Beav. 540	Colhonn n Trustees of Foyle College 1898 1	T TR 98	R			
Collent v. Wright, 8 E. & B. 647; 27 L. J. Q. B. 215; 4 Jur. N. S. 357; 6 W. R. 123	Collen v. Gardner, 21 Beav. 540					
Collett v. Curling, 10 Q. B. 785; 16 L. J. Q. B. 390; 11 Jur. 890 Collett v. Young, 33 W. B. 543 Colley v. Streeton, 2 B. & C. 273 Colling v. Treweek, 6 B. & C. 398 L. T. 221; 36 W. B. 264 Colling ge's Settled Estate, Re, 30 Ch. D. 516; 57 L. J. Ch. 219; 57 L. T. 221; 36 W. B. 264 Colling wood v. Row, 26 L. J. Ch. 649 Colling wood v. Row, 26 L. J. Ch. 649 Collins v. Crouch, 13 Q. B. 542; 18 L. J. Q. B. 209; 13 Jur. 361 Collins v. Crouch, 13 Q. B. 542; 18 L. J. Q. B. 209; 13 Jur. 361 Collins v. Wilmoott, 11 L. T. 340; 13 W. R. 204 Collins v. Wilmoott, 11 L. T. 340; 13 W. R. 204 Collins v. Wilmoott, 11 L. T. 340; 13 W. R. 204 Collion v. Lingham, 1 Stark, 39 Collyer v. Speer, 2 Ball & B. 67 Counge Conserved and the colling v. Sillye, 50; 12 Congleton (Mayor of) v. Pattison, 10 East, 130 Congleton (Mayor of) v. Pattison, 10 East, 130 Congleton (Mayor of) v. Pattison, 10 East, 130 Connest v. Etbeetts, 1896, A. C. 490; 65 L. J. Ch. 808; 75 L. T. 36; 45 W. R. 50 Connest v. Ebbetts, 1896, A. C. 490; 65 L. J. Ch. 808; 75 L. T. 36; 45 W. R. 50 Connest v. Ebbetts, 1896, A. C. 490; 65 L. J. Ch. 808; 75 L. T. 36; 45 W. R. 50 Connest v. Ebbetts, 1896, A. C. 490; 65 L. J. Ch. 808; 75 L. T. 36; 45 W. R. 50 Connest v. Ebbetts, 1896, A. C. 490; 65 L. J. Ch. 808; 75 L. T. 36; 45 W. R. 50 Connest v. Corbett, 24 W. R. 181 Cook v. Goodman, 2 Q. B. 580; 11 L. J. Q. B. 225; 6 Jur. 779 21, 138 Cook v. Goodman, 2 Q. B. 580; 11 L. J. Q. B. 225; 6 Jur. 779 21, 138 Cook v. Weilland, 13 T. L. R. 481 Cook v. Wollan, 1 Ex. 67; 16 L. J. Ex. 253 Cook v. Williams, 13 T. L. R. 481 Cook v. Whellock, 24 Q. B. D. 658; 59 L. J. Q. B. 329; 62 L. T. 675; 38 W. R. 534 Cook v. Weilland, 13 T. R. 481 Cook v. Whellock, 24 Q. B. D. 658; 59 L. J. Q. B. 329; 62 L. T. 66; 40 W. R. 77 Cook v. Williams, 13 T. L. R. 481 Cooke v. Cholmondeley, 4 Drew, 326 Cooke v. Clayworth, 18 Ves. 12 Cooke v. Clayworth, 18 Ves. 12 Cooke v. Clayworth, 18 Ves. 12 Cooke v. Holman, 13 T. L. R. 481 Cooper v. Pland, 1 Eigh, 1 C. 485; 41 Coope	Collen v. Wright, 8 E. & B. 647: 27 L. J.	Q. B. 2	15:4	Jur. N	T. S.	
Collett v. Curling, 10 Q. B. 785; 16 L. J. Q. B. 390; 11 Jur. 890 Collett v. Young, 33 W. B. 543 Colley v. Streeton, 2 B. & C. 273 Colling v. Treweek, 6 B. & C. 398 L. T. 221; 36 W. B. 264 Colling ge's Settled Estate, Re, 30 Ch. D. 516; 57 L. J. Ch. 219; 57 L. T. 221; 36 W. B. 264 Colling wood v. Row, 26 L. J. Ch. 649 Colling wood v. Row, 26 L. J. Ch. 649 Collins v. Crouch, 13 Q. B. 542; 18 L. J. Q. B. 209; 13 Jur. 361 Collins v. Crouch, 13 Q. B. 542; 18 L. J. Q. B. 209; 13 Jur. 361 Collins v. Wilmoott, 11 L. T. 340; 13 W. R. 204 Collins v. Wilmoott, 11 L. T. 340; 13 W. R. 204 Collins v. Wilmoott, 11 L. T. 340; 13 W. R. 204 Collion v. Lingham, 1 Stark, 39 Collyer v. Speer, 2 Ball & B. 67 Counge Conserved and the colling v. Sillye, 50; 12 Congleton (Mayor of) v. Pattison, 10 East, 130 Congleton (Mayor of) v. Pattison, 10 East, 130 Congleton (Mayor of) v. Pattison, 10 East, 130 Connest v. Etbeetts, 1896, A. C. 490; 65 L. J. Ch. 808; 75 L. T. 36; 45 W. R. 50 Connest v. Ebbetts, 1896, A. C. 490; 65 L. J. Ch. 808; 75 L. T. 36; 45 W. R. 50 Connest v. Ebbetts, 1896, A. C. 490; 65 L. J. Ch. 808; 75 L. T. 36; 45 W. R. 50 Connest v. Ebbetts, 1896, A. C. 490; 65 L. J. Ch. 808; 75 L. T. 36; 45 W. R. 50 Connest v. Ebbetts, 1896, A. C. 490; 65 L. J. Ch. 808; 75 L. T. 36; 45 W. R. 50 Connest v. Corbett, 24 W. R. 181 Cook v. Goodman, 2 Q. B. 580; 11 L. J. Q. B. 225; 6 Jur. 779 21, 138 Cook v. Goodman, 2 Q. B. 580; 11 L. J. Q. B. 225; 6 Jur. 779 21, 138 Cook v. Weilland, 13 T. L. R. 481 Cook v. Wollan, 1 Ex. 67; 16 L. J. Ex. 253 Cook v. Williams, 13 T. L. R. 481 Cook v. Whellock, 24 Q. B. D. 658; 59 L. J. Q. B. 329; 62 L. T. 675; 38 W. R. 534 Cook v. Weilland, 13 T. R. 481 Cook v. Whellock, 24 Q. B. D. 658; 59 L. J. Q. B. 329; 62 L. T. 66; 40 W. R. 77 Cook v. Williams, 13 T. L. R. 481 Cooke v. Cholmondeley, 4 Drew, 326 Cooke v. Clayworth, 18 Ves. 12 Cooke v. Clayworth, 18 Ves. 12 Cooke v. Clayworth, 18 Ves. 12 Cooke v. Holman, 13 T. L. R. 481 Cooper v. Pland, 1 Eigh, 1 C. 485; 41 Coope	357 : 6 W. R. 123		•••	•••	•••	72
Collett v. Young, 33 W. R. 543	Collett v. Curling, 10 Q. B. 785: 16 L. J. Q. I	B. 390:	11 Jur	. 890		
Collet v. Young, 33 W. R. 543	g, v, v					
Colliey v. Streeton, 2 B. & C. 273	Collett v. Young, 33 W. R. 543	•••	•••	•••		
Colling v. Treweek, 6 B. & C. 398			•••	•••	847.	417
Collinge's Settled Estate, Re, 30 Ch. D. 516; 57 L. J. Ch. 219; 57 L. T. 221; 38 W. R. 264	Colling v. Treweek, 6 B. & C. 398	•••	•••	•••		
Colling & 21 L. R. Ir. 508	Collinge's Settled Estate, Re, 30 Ch. D. 51	6;57 I	J. C	h. 219	; 57	
Colling & 21 L. R. Ir. 508	L. T. 221; 36 W. R. 264	•••	•••	•••	•••	64
Collins v. Crouch, 13 Q. B. 542; 13 L. J. Q. B. 209; 13 Jur. 361	Collingwood v. Row, 26 L. J. Ch. 649	•••	•••		•••	
Collins and Harding's Case (or Collins v. Harding), 13 Rep. 57; Cro. Eliz. 606	Collins, Re, 21 L. R. Ir. 508	•••	•••	•••		
Eliz. 606	Collins v. Crouch, 13 Q. B. 542; 18 L. J. Q. 1	В. 209;	13 Jur	. 861	<u>_</u> '	454
Collins v. Willmott, 11 L. T. 340; 13 W. R. 204	Collins and Harding's Case (or Collins v. Har	ding), 1	3 Re p.	57;	Cro.	
Colliss v. Willmott, 11 L. T. 340; 13 W. R. 204	Eliz. 606	•••	•••	218		
Collison v. Lettsom, 6 Taunt. 224	Collins v. Sillye, Sty. 265	•••	•••	•••		
Colton v. Lingham, 1 Stark. 39	Collins v. Willmott, II L. T. 840; 13 W. K.			•••		
Colyer v. Speer, 2 Ball & B. 67	Collison v. Lettsom, b Taunt. 224					
Counbe's Case, 9 Rep. 75a	Colton v. Lingham, 1 Stark. 39					
Congham v. King. Čro. Csr. 221						
Congleton (Mayor of) v. Pattison, 10 East, 130	Conghem w Vive Cre Con 991					
Connor v. Fitzgerald, 11 L. R. Ir. 106	Congleton (Newsport) - Dettion 10 Foot 190					
Conny's Case, 9 Rep. 85 a	Connor a Fitzgerald 11 I D In 106					
Constable and Cranswick's Arbitration, Re, 80 L. T. 164; 43 Sol. Journ. 208		•••	•••	•••		
208	Constable and Cranawick's Arbitration De 80	T T 14	4 . 49	gai fa		10
Conquest v. Ehbetts, 1896, A. C. 490; 65 L. J. Ch. 808; 75 L. T. 36; 45 W. R. 50		14. 1. 10	* , *0	301. 00	uru.	EQE
Conservators of River Thames v. Commissioners of Inland Revenue, 18 Q. B. D. 279; 56 L. J. Q. B. 181; 56 L. T. 198; 35 W. R. 274		T (Ch 80	18 · 7K	1. T		UOU
Conservators of River Thames v. Commissioners of Inland Revenue, 18 Q. B. D. 279; 56 L. J. Q. B. 181; 56 L. T. 198; 35 W. R. 274		,. OII. O	, 10	14 1.		417
Q. B. D. 279; 56 L. J. Q. B. 181; 56 L. T. 198; 35 W. R. 274	Conservators of River Thames a Commissioner	re of In	land R	evenne	18	,
274	O B D 279 · 56 L J O B 181 · 5	SR T. T	108	25 W	Ŕ	
Cooch v. Goodman, 2 Q. B. 580; 11 L. J. Q. B. 225; 6 Jur. 779 21, 183 Cook v. Corbett, 24 W. R. 181	274				85.	175
Cook v. Gorbett, 24 W. R. 181	Cooch v. Goodman. 2 O. B. 580: 11 L. J. O. 1	B. 225 :	6 Jur.	779	21.	188
Cook v. Guerra, L. R. 7 C. P. 132; 41 L. J. C. P. 89; 26 L. T. 97; 20 W. R. 367	Cook v. Corbett. 24 W. R. 181	,	•••	•••	,	288
20 W. R. 367 Cook v. Moylan, 1 Ex. 67; 16 L. J. Ex. 253	Cook v. Guerra, L. R. 7 C. P. 132; 41 L. J.	. C. P. 8	9 : 26	L. T.	97:	
Cook v. Moylan, 1 Ex. 67; 16 L. J. Ex. 253	20 W. R. 367	•••			223,	226
Cook v. Waugh, 2 Giff. 201	Cook v. Moylan, 1 Ex. 67; 16 L. J. Ex. 253	•••	•••	•••	•	
Cook v. Whellock, 24 Q. B. D. 658; 59 L. J. Q. B. 329; 62 L. T. 675; 38 W. R. 534			•••			119
Cook v. Williams, 13 T. L. R. 481	Cook v. Whellock, 24 Q. B. D. 658; 59 L. J. (Q. B. 32	9;62	L. T. (375;	
Cooke v. Cholmondeley, 4 Drew. 326	88 W. R. 534	•••	•••	•••		
Cooke v. Loxley, 5 T. R. 4	Cook v. Williams, 13 T. L. R. 481	•••	•••	•••		
Cooke v. Loxley, 5 T. R. 4	Cooke v. Cholmondeley, 4 Drew. 326	•••	•••	•••	•••	
Cooke v. Loxley, 5 T. R. 4	Cooke v. Clayworth, 18 Ves. 12	•••	•••	•••		
Cooke v. Yates, 4 Bing. 90	Cooke 2. Ingram. 68 L. T. 671	•••	•••	•••	•••	
Coomber v. Howard, 1 C. B. 440 151, 220 Coombes v. Dutton, 5 M. & W. 469 11. 1. 26. 42; 65 L. T. 56; 40 Coombes v. Wilks, 1893, 3 Ch. 77; 61 L. J. Ch. 42; 65 L. T. 56; 40 11. T. 56; 40 W. R. 77 11. 1. Ch. 42; 65 L. T. 56; 40 Cooper v. Belsey, 1899, 1 Ch. 639; 68 L. J. Ch. 258; 80 L. T. 69; 47 W. R. 443 11. 1. Ch. 258; 80 L. T. 69; 47 W. R. 443 11. 1. Ch. 258; 80 L. T. 69; 47 Cooper v. Blandy, 1 Bing. N. C. 45 11. 1. Ch. 258; 80 L. T. 69; 47 Cooper v. Flynn, 3 Ir. L. R. 473 11. Ch. 258; 74 L. T. 495; 77 Cooper v. Lands, 14 L. T. 287; 14 W. R. 610 11. S. 610 Cooper v. Pearse, 1896, 1 Q. B. 562; 65 L. J. M. C. 95; 74 L. T. 495; 74 L. T. 49	Cooke v. Loxley, 5 T. R. 4	•••				
Coomber v. Howard, 1 C. B. 440 151, 220 Coombes v. Dutton, 5 M. & W. 469 11. 1. 26. 42; 65 L. T. 56; 40 Coombes v. Wilks, 1893, 3 Ch. 77; 61 L. J. Ch. 42; 65 L. T. 56; 40 11. T. 56; 40 W. R. 77 11. 1. Ch. 42; 65 L. T. 56; 40 Cooper v. Belsey, 1899, 1 Ch. 639; 68 L. J. Ch. 258; 80 L. T. 69; 47 W. R. 443 11. 1. Ch. 258; 80 L. T. 69; 47 W. R. 443 11. 1. Ch. 258; 80 L. T. 69; 47 Cooper v. Blandy, 1 Bing. N. C. 45 11. 1. Ch. 258; 80 L. T. 69; 47 Cooper v. Flynn, 3 Ir. L. R. 473 11. Ch. 258; 74 L. T. 495; 77 Cooper v. Lands, 14 L. T. 287; 14 W. R. 610 11. S. 610 Cooper v. Pearse, 1896, 1 Q. B. 562; 65 L. J. M. C. 95; 74 L. T. 495; 74 L. T. 49	Cooke v. Yates, 4 Bing. 90					
Coombes v. Dutton, 5 M. & W. 469						
Coombes v. Wilks, 1893, 3 Ch. 77; 61 L. J. Ch. 42; 65 L. T. 56; 40 W. R. 77 109 W. R. 77 109 Cooper v. Belsey, 1899, 1 Ch. 639; 68 L. J. Ch. 258; 80 L. T. 69; 47 64 Cooper v. Blandy, 1 Bing. N. C. 45 77, 78 Cooper v. Flynn, 3 Ir. L. R. 473 179 Cooper v. Lands, 14 L. T. 287; 14 W. R. 610 83 Cooper v. Pearse, 1896, 1 Q. B. 562; 65 L. J. M. C. 95; 74 L. T. 495;	Coomber v. Howard, 1 C. B. 440	•••		•••		
W. R. 77	Coombes v. Dutton, b M. & W. 469	a		m	'	482
Cooper v. Belsey, 1899, 1 Ch. 639; 68 L. J. Ch. 258; 80 L. T. 69; 47 W. R. 443	Coombes v. Wilks, 1893, 3 Ch. 77; 61 L. J.	Cn. 42;	00 1.			100
Cooper v. Belsey, 1899, 1 Ch. 639; 68 L. J. Ch. 258; 80 L. T. 69; 47 W. R. 443	Ocean Property 94 T. T. Ch. 979 . O. Du. & S.	910	•••	•••	•••	
W. R. 443	Cooper, Ex parte, 54 L. J. Ch. 575; 2 Dr. & C), OFO.	00 T	т ео	. 47	51
Cooper v. Blandy, 1 Bing. N. C. 45	W D AAO		ου п.	1. 05	, =1	R.A
A4 W. R. 494	Copper Rlandy 1 Ring N C 48	•••	•••	•••	77	78
A4 W. R. 494	Cooper v. Disnuy, I Ding. N. C. 40		•••		• • •	179
A4 W. R. 494		•••				
44 W. R. 494	Cooper v. Flynn, 3 fr. L. R. 473 Cooper v. Landa 14 f. T 987 · 14 W R 810			•••	•••	82
Cooper v. Robinson, 10 M. & W. 694; 12 L. J. Ex. 48 147, 329 Cooper v. Stuart, 14 A. C. 286; 58 L. J. P. C. 98; 60 L. T. 875 141 Cooper v. Twibill, 3 Camp. 286, note (a) 365	Cooper v. Lands, 14 L. T. 287; 14 W. R. 610) M. C 9	•••	•••		83
Cooper v. Twibill, 3 Camp. 286, note (a) 365	Cooper v. rearse, 1890, 1 Q. D. 502; 05 L. J.	M. C. 8)5;74	L. T. 4	 195 ;	83
Cooper v. Twibill, 3 Camp. 286, note (a) 365	44 W. R. 494	м. С. г	 5;74	L. T. 4	 195 ;	8 3 55 9
The state of the s	44 W. R. 494	м. С. г	 5;74	L. T. 4	 195 ; 147,	83 559 329
	A4 W. R. 494	M. C. 8 J. Ex. 48 J. 98; 60	 05; 74 3 1 L. T.	L. T. 4	195 ; 147,	83 559 329 141

					70	AGE
Cope, Re, 16 Ch. D. 49	•••		•••	•••		60
Copeland v. Stephens, 1 B. & A. 593	•••	•••	•••	•••	190,	
Copeland v. Watts, 1 Stark. 96	•••		•••	•••	•••	491
Copland v. Laporte, 3 A. & E. 517	•••	•••	•••	•••	′ •••	160
Copp v. Aldridge & Co., 11 T. L. R. 411		•••	•••	•••	•••	885
Copper Mining Co. v. Beach, 13 Beav. 4	78 T. DI-	74.6		D 500	•••	167
Corbett, Ex parte, 14 Ch. D. 122; 49 L. Corbett r. Jonas, 1892, 3 Ch. 137; 62 L	J. DK	. /4 ; 2	20 W	D⊷ 2029 Γ 101	•••	461 140
Corbett v. Plowden, 25 Ch. D. 678; 54	T. J	Ch 10	07 LL	T. T. 2	40 :	140
32 W. R. 667		•••				69
Corder r. Drakeford, 3 Taunt. 382	•••	•••	•••	•••	•••	179
Cornewall v. Dawson, 24 L. T. 664	•••	•••			162,	411
Cornish v. Cleife, 3 H. & C. 446: 34 L.	J. Ex.	19;1	1 Jur.	N. S. 1	81 :	
11 L. T. 606; 13 W. R. 389	•••	•••	•••		•••	840
11 L. T. 606; 13 W. R. 389 Cornish v. Searell, 8 B. & C. 471	. .	~ _D		78, 83	, 248,	490
Comment v. Studos, L. R. S C. F. 354; 5	У L. J.	U. F.	ZUZ; 2	32 L. I.	Z1;	
18 W. R. 547 Corpe v. Overton, 10 Bing. 252	•••	•••	•••	88, 95	, 440,	10
Cornus Christi Coll of Rocers 40 I. I	OB.	4 ···	•••	•••	•••	578
Corpe v. Overton, 10 Bing. 252 Corpus Christi Coll. v. Rogers, 49 L. J. Corus v. Anon., Cro. Eliz. 544 Corv. Riistov. 2 App. Cas. 262 .46 I	Q. D.	2				399
25 W. R. 388 Coeby v. Shaw, 19 L. R. Ir. 307; 23 L.	•••	•••	•••	•••	85	, 87
Cosby v. Shaw, 19 L. R. Ir. 307; 23 L.	R. Ir.	181	•••	•••	•••	530
Com a Contract, 16, 1097, 1 On a ; c	10 II. 0	. CII. 4		L. I. U	···	
45 W. R. 117	•••	•••	•••	•••	•••	425
Cosser v. Collinge, 8 My. & K. 283	•••	•••	•••	•••	157,	416
Coster v. Cowling, 7 Bing. 456	•••	•••	 a ::: a	•••	•••	
					Ine	
N. S. 803	0,00	ш. о. ч	0. 1. 2	20, 1	· · · ·	498
Cotsworth v. Bettison, 1 Ld. Raym, 104	•••		•••	•••	295.	308
Cottee v. Richardson, 7 Ex. 143; 21 L.	J. Ex.	52	•••	•••	•••	148
N. S. 803	•••	•••	•••	•••	•••	28
Counter v. Macpherson, 5 Moo. P. C. 83		•••	•••	•••	•••	343
Coupland v. Maynard, 12 East, 134	•••	•••	•••	•••	276,	487
Courtown v. Ward, 1 Sch. & Lef. 8				•••	•••	878
Consine a Dilling 9 H to C 200 : 05 1	520; 1	9 W. H	. 792	•••	4.49	140
Cove v. Smith, 2 T. L. R. 778	. J. E	X. 04	•••	•••	440,	502
Cowan v. Milbourn, L. R. 2 Ex. 230; 3	в Т. J.	Ex. 19	24 : 16	L. T. 2	90:	002
15 W. R. 750	• 21. 0.		•••			354
Coward v. Gregory, L. R. 2 C. P. 153;	36 L. J	J. C. P.	. 1; 19	Jur. N	ī. S.	
1000: 15 L. T. 279: 15 W. R. 170	•••	•••	•••	338,	843,	503
Cowen v. Phillips, 33 Beav. 18 Cowen v. Truefitt, 1898, 2 Ch. 551; 67	-·· -		_ •••		•••	125
Cowen v. Truefitt, 1898, 2 Ch. 551; 67	L. J.	Ch. 69	5;79	L. T. 3	48;	
47 W. R. 29; App. '99, 2 Ch. 309;	, 68 T	. J. C	n. 563	; 81 T	. I.	100
104; 47 W. R. 661 Cowley (Earl) v. Wellesley, 1 Eq. 659	•••	•••	•••		132,	199
Cowley (Earl) v. Wellesley, 1 Eq. 659 Cowper v. Fletcher, 6 B. & S. 464; 34 I	. I. O	B 18	7 : 12	L. T. 4	20 :	
13 W. R. 739	- v. v.		. ,		,	63
Cox v. Bailey, 6 M. & Gr. 193	•••	•••	•••	•••	•••	281
Cox v. Bent, 5 Bing. 185	•••	•••	•••	•••	98	, 94
13 W. R. 739	8 L. J	. Ch. 3	389;3	Jur. N	. s.	
100	•••	•••	•••	•••	. 86,	202
Cox v. Brain, 8 Taunt. 95	100 -	10 T	105	•••	•••	2
Cox v. Glue, 5 C. B. 538; 17 L. J. C. P.	102;	12 Jur 14	. 185	•••		135 243
Cox v. Knight, 18 C. B. 645; 25 L. J. Cox v. Leigh, L. R. 9 Q. B. 833; 43 l	0.	R 19	3 . 30	T. T 4	94 •	410
22 W. R. 780			***			317
Cox v. Middleton, 2 Drew. 209; 23 L. J	. Ch. 6	318: 2	W. R.	284		108
Cox v. Painter, 7 C. & P. 767	•••	•••	•••	•••	290.	
Coxhead v. Mullis, 3 C. P. D. 439; 47	L. J. C	. P. 76	1;39	L. T. 8	49;	
27 W. R. 136	•••	•••	•••	•••		7
Crabtree v. Robinson, 15 Q. B. D. 312;	4 L. J.	Q. B.	544 ; 3	3 W. R.	936	284

0 1 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7					P	AGE
Craig, Re, Ir. R. 4 Eq. 158 Craig's Claim, Re, 1895, 1 Ch. 267 Craig v. Greer, 1899, 1 Ir. R. 258 Cramer v. Mott, L. R. 5 Q. B. 357; 89	•••	•••	•••	•••	•••	
Craig v. Greer. 1899. 1 Ir. R. 258	•••	•••	•••	•••	368,	
Cramer v. Mott, L. R. 5 Q. B. 357; 39	L. J. Q.	B. 172	; 22 I	. T. 8	57;	
18 W. R. 947		•••	•••	•••	257,	285
Crane v. Batten, 23 L. T. O. S. 220	•••	•••	•••	381,	382,	449
Crawley n. Price L. R 10 O R \$09 · 33	i	 203 · 21	 RW F	874	48	34U 160
Creagh v. Blood, 2 Jo. & Lat. 509: 3 Ib	id. 133				14.	490
Creagh v. Blood, 2 Jo. & Lat. 509; 3 Ib. Creak v. Justices of Brighton, 1 F. & F. Credland v. Potter, 10 Ch. 8; 44 L. J	110	•••	•••	•••		582
Credland v. Potter, 10 Ch. 8; 44 L. J	. Ch. 1	.69; 31	L. T	. 522 ;	23	
W. R. 36	•••	•••	•••	•••	•••	430
Crisp's Case. Cro. Eliz. 164	•••	•••	•••	•••	•••	126
Crisp v. Churchill, cited 1 B. & B. 340	•••	•••	•••	•••	9,	354
Crisp v. Price, 5 Tannt. 548	•••	•••	•••	•••	•••	134
Crocker v. Fothergill, 2 B. & A. 652	14.0 0	 D. 94			 D	576
277; 52 L. T. 374	14 Q. E	D. 34	; 54 1	u. J. Q.	ъ.	510
Croft a Lamley & W & R RAS . R H I	. C. 67	2; 27	L. J. G). B. 8	21;	
4 Jur. N. S. 903		170, 1	72, 35	8, 413,	422,	501
Cromwell v. Andrews, Cro. Eliz. 15	•••	•••	•••	•••		222
Crook Re 66 I. T 20	•••	•••	•••	•••	302,	995
Crook v. Corp. of Seaford, 6 Ch. 551: 2	5 L. T.	1:19	 W. R.	938	024,	22
Cropper v. Warner, C. & E. 152			•••	•••		263
Crosby v. Wadsworth, 6 East, 602	•••	•••	•••	•••	•••	85
Crosier v. Tomkinson, 2 Ld. Ken. 439	T	•••	•••	•••	57.4	258
Cross v. Barnes, 40 L. J. Q. B. 4/9; 36	L. I. 0	93	•••	•••	514,	128
Cross v. Jordan. 8 Ex. 149: 22 L. J. Ex.	. 70	•••	•••	•••	•••	498
Crook v. Corp. of Seaford, 6 Ch. 551; 2: Cropper v. Warner, C. & E. 152 Crosby v. Wadsworth, 6 East, 602 Crosier v. Tomkinson, 2 Ld. Ken. 439 Cross v. Barnes, 46 L. J. Q. B. 479; 86 Cross v. Eglin, 2 B. & Ad. 106 Cross v. Jordan, 8 Ex. 149; 22 L. J. Ex. Crosse v. Duckers, 27 L. T. 816; 21 W. Crosse v. Morgan, 60 L. T. 703; 37 W. Crosse v. Welch, 8 T. L. R. 401, 709 Crosse v. Welch, 8 T. L. R. 401, 709 Crosse v. Young, 2 Show. 425 Crossfield v. Morrison, 7 C. B. 286; 18 I Crossley v. Maycock, 18 Eq. 180; 43 L	R. 287	•••	•••	•••	•••	373
Crosse v. Morgan, 60 L. T. 703; 37 W.	R. 543			•••	•••	156
Crosse v. Raw, L. R. 9 Ex. 209; 43 L.	J. Ex. 1	.44; 28	. w. k	. 6	040	393
Crosse v. Young, 2 Show, 425	•••	•••	•••	•••	200,	399
Crossfield v. Morrison, 7 C. B. 286; 18	L. J. C.	P. 135	; 13 J	ur. 56	5	442
Crossley v. Maycock, 18 Eq. 180; 43 L	. J. C	h. 379	; 22 V	v. R.		
Onemah m Fastalfa Sin T Danum 419		 Kr 0'			103,	
	41 I. J	Ex. 9	7: 26 1	 г. т. 2	86 :	
20 W. R. 536						442
Crowder v. Self, 2 Moo. & R. 190	•••	•••	•••	•••	•••	287
Crowley v. Vittey, 7 Ex. 319; 21 L. J. I	Ex. 135	•••	•••	227,	490,	577
Crowther, Re, 4 Morr. 100	•••	•••	•••	•••	•••	458
Crowdon Hospital v. Farley & Tannt 48	7		•••	•••	•••	287
Crump v. Temple, 7 T. L. R. 120	• •••			•••	•••	81
Crusoe v. Bugby, 2 W. Bl. 766; 3 Wils.	234	•••	•••	•••	413,	421
Cubitt v. Porter, 8 B. & C. 257	•••	•••	•••	•••	•••	377
Cullen and Riel's Contract Re '04 1 In	B 904	···	•••	•••	•••	309
Culling v. Tuffuall. Bull. N. P. 84	. 16. 200	• • • •	•••	•••	513.	520
Crouch v. Tregonning, L. R. 7 Ex. 88; 20 W. R. 536	. J. C	h. 484	; 74 L	. T. 8	47;	
						450
Cumberland v. Bowes (or Lady Glamis),	15 C. B	. 348;				970
1 Jur. N. S. 236 Cumberland Banking Co. v. Maryport,	ke Co	ıl Co	 '92 1	 Ch. 4		372
61 L. J. Ch. 227; 66 J. T. 108; 40	W. R.	280				527
Cumming v. Bedborough, 15 M. & W. 4	38	•••	•••	•••		230
Cunningham v. Butler, 3 Giff. 37	•••	•••	•••	•••	•••	133
Cuno, Re, 43 Ch. D. 12; 62 L. T. 15		700.	 10 T		918	15
Curling v. Mills, 6 M. & Gr. 173; 7 Sco Curtis v. Hubbard, 1 Hill's Rep. (New Y	ork) 82	i. 709 ; 6	12 L.	J. U. P	. 310	80 283
Sarano se transparat t trutto rache (110M T	ULK/ UU	····	•••	•••	•••	200

Charles Misses O. I. III 1900							AGE
Curtis v. Nixon, 24 L. T. 706 Curtis v Spitty, 1 Bing. N. C. 75 Curtis v. Wheeler, Moo. & M. 495	 R · A I.	c	P 936	•••	•••	150	491
Curtis v. Wheeler. Moo. & M. 498	3			• • • •	•••	150, 255,	414
Culibertson v. Irving, o m. & N.	100: 2	W L. J	. L.X. 4	100 : 0	Jur. 1	J. D.	
1211; 3 L. T. 335; 8 W. R. Cutting v. Derby, 2 W. Bl. 1075 Cutting v. Derby, 2 W. Bl. 1077	704	•••	•••	•••	68,	74, 75	, 76
Cutting v. Derby, 2 W. Bl. 1075	•••	•••	•••	•••	223	481,	566
Cutting v. Derby, 2 W. Bl. 1077	•••	•••	•••	•••	04	, 228,	575
Dakin v. Cope, 2 Russ. 170 Dalby v. Hirst, 1 Br. & B. 224 Dalley v. Phillips and Marriott, 1 Dallman v. King, 4 Bing. N. C. 1 Dalton v. Whittem, 8 Q. B. 961; Daly v. Edwardes, 82 L. T. 372; 244; 64 J. P. 295; 16 T. L. Dancer v. Hastings, 4 Ring, 2							496
Dalby v. Hirst, 1 Br. & B. 224	•••	•••	•••	•••	•••	533,	534
Dalley v. Phillips and Marriott, 1	8 T. L.	R. 18	•••	•••	•••	••• ′	163
Dallman v. King, 4 Bing. N. C. 1	05		•••	•••	•••	228,	343
Dalton v. Whittem, S Q. B. 961;	12 L. J	I. Q. B	. 55 40 W	D 981		72:4	312
244 · 64 J P 295 · 16 T I.	R. 288 ·	17 Th	40 W. id. 115	16. 000); 4 8.	20UL. 8A	422
				•••	•••		258
Dane v. Kirkwall, 8 C. & P. 679		•••					13
Daniel v. Gracie, 6 Q. B. 145; 13	L. J. (Q. B. S	09;8.	Jur. 70	8	152,	
Deniel - Stemmer I B 0 For 16	T - 00 '	W D	<i>aa</i> n			218,	248
Daniel v. Stepney, L. R. 9 Ex. 18 Daniel v. Waddington Hill, Cro.	50; 22 Tec 377	₩. K. 7	002	•••	•••	•••	148
						KAQ .	
Daniels v. Davison, 16 Ves. 249 Dann v. Spurrier, 7 Ves. 231 Dann v. Spurrier, 3 B. & P. 399, Danvill v. Roper, 3 Drew. 299 Darcy (Lord) v. Askwith, Hob. 23-	•••	•••	•••		•••	46	, 48
Daniels v. Davison, 16 Ves. 249	•••	•••	•••	•••	•••	447,	464
Dann v. Spurrier, 7 Ves. 231		•••	•••	•••	•••	49,	112
Dann v. Spurner, 3 B. & P. 399, Denvill a Roper 2 Drew 200	442	•••	•••	•••	•••	•••	100
Darcy (Lord) v. Askwith. Hob. 23	4	•••	•••	21	1. 212	349	351
Darby v. Harris, 1 Q. B. 895; 10	L. J. (Q. B. 29	94;5	Jur. 98	8	257,	260
						308,	
Dargan v. Davies, 2 Q. B. D. 118	; 46 L	. J. M.	C. 12	2; 35	L. T. 8	310;	
25 W. R. 230 Darley v. Tennant, 53 L. T. 257 Darlington v. Hamilton, Kay, 550	•••	•••	•••	•••	•••	•••	298
Darlington v. Hamilton. Kay. 550	 : 23 L	J. Ch.	1000	•••	•••	428.	496
Darlington v. Pritchard, 4 M. & C	ir. 783 ;	12 L.	J. C. 1	P. 84;	7 Jur.	677	580
Darlington v. Pulteney, Cowp. 26	i0	•••	•••	•••	•••	•••	56
Darrell v. Tibbitts, 5 Q. B. D. 56	0;50	L. J. Q	B. 33	3;42	L. T. 7	797;	
22 W. R. 66 Dashwood v. Magniac, 1891, 3 C.	 . 90 <i>a</i> .	 en T	OF		 . es t	70	382
811	u. 200 ;	00 L.	J. CI	. 608	, 65 11 849	, 369,	378
Daubuz v. Lavington, 13 Q. B. D	. 847 ;	53 L.	J. Q. E	. 283	: 51 L	. T.	0.0
206 : 32 W. R. 772	•••		•••			•••	575
Davenport v. Reg., 3 App. Cas	. 115;	47 L.	J. P.	C. 8;	37 L	. Т.	
727 Dovidson a Allen 90 I P In 14	•••	•••	•••	•••	•••	496,	
Davies n. Aston 1 C. B. 746: 14	l. J. C	 P. 22	8	•••	•••	242,	
727 Davidson v. Allen, 20 L. R. Ir. 16 Davies v. Aston, 1 C. B. 746; 14 Davies v. Davies, 36 Ch. D. 359			••••				357
HOWING IN HOUSE XX (th II AUU •	A7	1 1:h 1	nux ·	'X I. '		. 28	
W. R. 899		•••	•••	•••	•••	49,	
Davies v. Fitton, 2 Dr. & War. 22	5	•••	•••	•••	•••	192,	
Davies v. Marshall, 10 C. B. N. S.	. 697	•••	•••	•••	•••	126,	88
Davies v. Powell, Willes, 46		•••	•••	•••	•••	•••	261
W. R. 399 Davies v. Fitton, 2 Dr. & War. 22 Davies v. Jones, 18 T. L. R. 367 Davies v. Marshall, 10 C. B. N. S Davies v. Powell, Willes, 46 Davies v. Stacey, 12 A. & E. 506	•••		•••	•••	•••	•••	150
Davies v. Underwood, 2 H. & N.	570 ; 2°	7 L. J.	Ex. 1	13;3	Jur. N	. s.	
1223 Davis & Co. 72, 99 () P. D. 109	. 27 W	 D or		•••	•••	•••	417
Davis v. Artinostall 49 I. J. Ch.	609	. n. 20		•••	•••	•••	259
Davis v. Burrell, 10 C. B. 821: 12	Jur. 6	58	•••	•••	•••	•••	396
Davis v. Eyton, 7 Bing. 154	•••	•••	•••	•••	•••	169,	532
Davis v. Gyde, 2 A. & E. 623	•••	•••	•••	•••	•••	•••	242
1223	80 T	₀	 R	 . Q1 T	···	45,	, 56
48 W. R. 445 · 64 J P. 126 ·	16 T	υ. γ. [. Κ 1	D. 232 40	, or 1	. I. /	ου ;	265
20 111 20 220 , 02 01 11 100 ,					•••	•••	

			PAGE
Davis v. James, 26 Ch. D. 778; 53 L.	J. Ch. 523;	50 L. T. 115	
W. B. 406	•••	•••	448
Davis v. Jones, 17 C. B. 625; 25 L. J.	C. P. 91	•••	147
Davis v. Jones, 2 B. & A. 165	***		515, 520
Davis v. Leicester (Corporation of), 189	4, 2 Ch. 208;	63 L. J. Ch. 4	40 :
70 L. T. 599 : 42 W. R. 610		***	83
Davis v. Nisbett, 10 C. B. N. S. 752; Davis v. Shepherd, 1 Ch. 410; 35 L. J	81 L. J. C. P.	6	413
Davis v. Shepherd, 1 Ch. 410; 85 L. J	. Ch. 581; 15	L. T. 122	136, 201
Davis v. Town Properties Investment	Corporation, '	02, 2 Ch. 685	: 71
Davis v. Town Properties Investment L. J. Ch. 900; 87 L. T. 430; 51 L. J. Ch. 889; 88 L. T. 665; 51 Davis v. Treharne, 6 App. Cas. 460;	W. R. 42; '0	3, 1 Ch. 797	72
L. J. Ch. 889; 88 L. T. 665; 51	W. R. 417	400	, 401, 449
Davis v. Treharne, 6 App. Cas. 460;	50 L. J. Q. I	3. 665; 29 W	. R.
869			144, 200
Davison v. Gent, 1 H. & N. 744; 26 L	. J. Ex. 122;	3 Jur. N. S. 34	42 490
Davison v. Stanley, 4 Burr. 2210	•••	•••	489
Davison v. Wilson, 11 Q. B. 890	•••		570
Davison v. Stanley, 4 Burr. 2210 Davison v. Wilson, 11 Q. B. 890 Dawes v. Dowling, 31 L. T. 65; 22 W Dawes v. Thomas, 92, 1 Q. B. 414; 61	. R. 770	•••	330
Dawes v. Thomas, '92, 1 Q. B. 414; 61	L. J. Q. B. 4	82; 66 L. T.	451;
			232
Dawson v. Alford, Dyer, 312a Dawson v. Cropp, 1 C. B. 961; 14 L.	•••		267
Dawson v. Cropp, 1 C. B. 961; 14 L.	J. C. P. 281; S	9 Jur. 944	288
Dawson v. Clementson, 1 T. L. R. 295	•••	•••	356
Dawson v. Dawson, 8 Sim. 346	•••	•••	165
Dawson v. Clementson, 1 T. L. R. 295 Dawson v. Dawson, 8 Sim. 346 Dawson v. Dyer, 5 B. & Ad. 584 Dawson v. Fitzgerald, 1 Ex. D. 257;	•••		159, 404
Dawson v. Fitzgerald, 1 Ex. D. 257;	45 L. J. Ex. 89	98; 3 5 L. T. 9	220 ;
24 W. B. //3			199
Dawson v. Lamb, 8 C. & K. 269	•••	•••	490
Dawson v. Linton, 5 B. & A. 521	•••	•••	383
Dawson v. Lamb, 3 C. & K. 269 Dawson v. Linton, 5 B. & A. 521 Dawson v. Massey, 1 Ball & B. 219 Day v. Day, L. R. 3 P. C. 751; 40	_ *** _ ***		78
Day v. Day, L. R. 3 P. C. 751; 40	L. J. P. C.	85; 24 L. T.	356;
19 W R 1017			wu n/i
Day v. Finn, Owen, 133 Day v. Singleton, '99, 2 Ch. 320; 68	- " "	. ·· <u>·</u> _ ·· <u>·</u>	136
Day v. Singleton, '99, 2 Ch. 320; 68	L. J. Ch. 59	3;81 L. T.	806;
48 W. R. 18	•••	•••	115, 424
Davreil 7, 110are, 12 A. & E. 500		•••	52
Deacon v. South Eastern Ry. Co., 61 I	. T. 8//	•••	140
Dean v. Allaley, 3 Esp. 11	01 T M 107	16 317 10 81	519
Dear v. Verity, 38 L. J. Ch. 297, 486; De Beauvoir v. Owen, 5 Ex. 166; 16 Debenham v. Chambers, 12 T. L. R. 2	21 1. 1. 100	; 1/ W. K. /1	6 118
Debankers a Chember 10 T T D	MI. 65 W. D1/;	11 Jur. 490	831
Debenham v. Chambers, 12 T. L. R. 2- Debenham v. Digby, 28 L. T. 170; 21 De Brassac v. Martyn, 11 W. R. 1020 De Brassche v. Alt. 8 Ch. D. 286: 47 I	117 1D 9KN	•••	432
De Description Working 11 W D 1000	W. II. 008	•••	
De Bussche v. Alt, 8 Ch. D. 286; 47 I	T (% 981.	98 T T 970	~~=
Decharmes r. Horwood, 10 Bing. 526	,	~~	367 64, 256
Deeble v. M'Mullen, 8 Ir. C. L. R. 355		•••	527
Deering v. Farrington, 1 Mod. 113	•••		152
Delaney v. Fox, 1 C. B. N. S. 166;	R T. J. C. P.	5 · 2 Jpr. N	. 8.
Delaney v. Fox, 2 C. B. N. S. 768; 2	ALLC P 2	48 6	9. 75. 238
De Lesselle v. Guildford. '01. 2 K	B. 215 : 70 L	J K B 583	· 84
L. T. 549: 49 W. R. 467: 17 T. 1	L. R. 264, 384	129. 180	855. 411
De Lassalle v. Guildford, '01, 2 K. L. T. 549; 49 W. R. 467; 17 T. Delmege v. Mullins, Ir. R. 9 C. L. 209			227
De Mattos v. Gibson, 4 De G. & J. 276			438
De Medina v. Norman, 9 M. & W. 820	•••	•••	118
De Medina v. Polson, Holt, N. P. 47	•••		94
Denby v. Moore, 1 B. & A. 123	•••	000	
Denby v. Moore, 1 B. & A. 123 Dendy v. Nicholl, 4 C. B. N. S. 376; De Nicholls v. Saunders, L. R. 5 C.	27 L. J. C. P.	220	501
De Nicholls v. Saunders. L. R. 5 C.	P. 589: 39 L.	J. C. P. 297	; 22
L. T. 661; 18 W. R. 1106			222 223
Denn v. Cartwright, 4 East, 29			148, 465
L. T. 661; 18 W. R. 1106 Denn v. Cartwright, 4 East, 29 Denn v. Dolman, 5 T. R. 641 Denn v. Fearnside, 1 Wils. 176 Denn r. Rawlins, 10 East, 261			495
Denn v. Fearnside, 1 Wils. 176	•••		92
Denn r. Rawlins, 10 East, 261	•••		463
Donn & Walker Pooks Add Cas 10	L		470

Donnett a Atherton T D 7	Λ P ·	012.	(1 T	r	1 4 E .	PA	GE
Dennett v. Atherton, L. R. 7 W. R. 442	•••			•••	•••	401, 4	02
Denny v. Hancock, L. R. 6 Ch.	l ; 23 L	T. 68	6; 19	W. R.	54	1	20
Denton v. Richmond, 1 Cr. & M.	784	-": ^	 D 00	4 . 17 1			27
Deptford (Churchwardens of) v. 8							34
Derby Canal Co. v. Wilmot, 9 East Derby (Earl of) v. Taylor, 1 East	st. 360	•••	•••		•••		82
Derby (Earl of) v. Taylor, 1 East	, 502			•••	•••	4	48
Derry v. Peek, 14 App. Cas. 8	87; 58	L. J. (Ch. 864	i; 61 I	1. 1. Z	85;	
28 W. R. 33 Descarlett v. Dennett, 9 Mod. 22 Descharmes, Ex parte, 1 Atk, 10		•••	•••	•••	•••		55 11
Descharmes, Ex parte, 1 Atk. 10	8	•••	•••	•••	•••		28
De Tablev's (Lord) Settled Estat	e, Re, 1	1 W. I	R. 936				18
Devonshire (Duke of) v. Barrow Q. B. 435; 36 L. T. 355; 2	Steel (., 2 (2. в. :	D. 286	; 46 L.	. J.	
Devonshire (Duke of) v. Broo	o w. n. kahaw	. 40У 81 Т.	т" яя	. 48 9	Sol Jon	ð	88
675				,		8	61
Devonshire (Duke of) v. Simmon D'Eyncourt v. Gregory, 3 Eq.	s, 11 T.	L. R.	52	•••		3	60
D'Eyncourt v. Gregory, 8 Eq.	382 ;	36 L.	J. Ch.	107;	15 W.	R.	10
186 Dibble v. Bowater, 2 E. & B. 50							23,
						249, 2	
Digby v. Atkinson, 4 Camp. 275	•••	•••	•••	•••	95, 96	, 97, 3	37
						4	64
Direct Spanish Telegraph Co. L. J. Q. B. 420; 51 L. T. 12 Dix v. Groom, 5 Ex. D. 91; 49	v. 5ne 24 · 32 '	pneru, W R	10 Q. 717	. в. у.	. 202;	56 3	88
Dix v. Groom, 5 Ex. D. 91; 49	L. J. Q.	B. 430	; 28 \	v. R. 3	70	3	110
Dixon v. Baty, L. R. 1 Ex. 259; Dixon v. Bradford, &c., Coal Sup	12 Jur	. N. S.	1024;	14 W.	R. 836	5	65
Dixon v. Bradford, &c., Coal Sup	ply Co.,	'04, 1	K. B. 4	44; 73	L. J. K	. В.	00
Dixon v. Bradford, &c., Coal Sup 136; 90 L. T. 122; 20 T. L Dixon v. Harrison, Vaugh. 46 Dixon v. Smith, 1 Swanst. 457 Dobson v. Somers, 13 Ir. C. L. I Dohson v. Jones, 5 M. & Gr. 112 Dod v. Monger, 6 Mod. 215 Dod v. Saxby, 2 Str. 1024 Dod v. Acklom 6 M. & Gr.	. K. 191	<i></i>	•••	•••	•••	2	68 555
Dixon v. Smith, 1 Swanst. 457	•••	•••	•••	•••		8	117
Dobbyn v. Somers, 13 Ir. C. L. l	R. 293	•••		•••	•••	126, 1	36
Dohson v. Jones, 5 M. & Gr. 112	•••	•••		•••	•••		88
Dod v. Monger, o Mod. 215 Dod v. Saxby. 2 Str. 1024	•••	•••	•••	•••	•••	286, 2	
Dod v. Saxby, 2 Str. 1024 Dodd v. Acklom, 6 M. & Gr. 6	372; 13	L. J.	C. P.	11;7	Jur. 10	17 29	24,
					487,	488, 4	ISA
Doddington's Case, 2 Rep. 32 b Dodson v. Sammell, 1 Dr. & Sm. Doe v. Abel, 2 M. & S. 541 Doe v. Adams, 2 Cr. & J. 232; 5 Doe v. Allsop, 5 B. & A. 142 Doe v. Amey. 12 A & E. 476.	E7E	•••	•••	•••	•••	1	
Doe v. Abel. 2 M. & S. 541	. 010	•••	•••	•••	•••	4	175
Doe v. Adams, 2 Cr. & J. 232;	2 Tyr. 2	89	•••		•••	69, 1	169
Doe v. Allen, 3 Taunt. 78	·	•••	•••	•••	•••	5	500
Doe v. Allsop, 5 B. & A. 142	•••	•••	•••	•••		4	130
Doe v. Amey, 12 A. & E. 470	•••	•••	•••	•••		7, 98, 4 	
Doe v. Allsop, 5 B. & A. 142 Doe v. Amey, 12 A. & E. 476 Doe v. Archer, 1 B. & P. 531 Doe v. Archer, 14 East, 245 Doe v. Ashburner, 5 T. R. 163 Doe v. Austin, 2 Moo. & Sc. 107 Doe v. Baker, 8 Taunt. 241 Doe v. Raker, 2 C. & K. 743	•••	•••	•••	•••	•••	4	173
Doe v. Ashburner, 5 T. R. 163		•••	•••	•••	•••	79.	80
Doe v. Austin, 2 Moo. & Sc. 107	; 9 Bir	ıg. 41	•••	•••	•••	76, 1	180
Doe v. Baker, 2 C. & K. 743	•••	•••	•••	•••	•••	8	
Doe v. Bancks, 4 B. & A. 401	•••	•••	•••	•••	•••	26. 4	196
Doe v. Barton, 11 A. & E. 307	•••	•••	•••		•••	2	238
Doe v. Bateman, 2 B. & A. 168	•••	•••	•••	•••	•••	••• 1	roa.
Doe v. Batten, Cowp. 243 Doe v. Baytup, 3 A. & E. 188; Doe v. Beckett, 4 Q. B. 601; 12 Doe v. Bell, 5 T. R. 471 Loe v. Banbam 7 Q. B. 976; 14	4 T. T	к. R	263	•••	•••	479, 5	568 75
Doe v. Beckett, 4 Q. B. 601: 12	L. J. C	D. B. 2	36	•••	•••		572
Doe v. Bell, 5 T. R. 471	`			•••	94,	125, 4	
1700 to Donimin, 1 & Di vio, 1		g. D. O.	,	u		2	217
Doe v. Benjamin, 9 A. & E. 644	•••	•	•••	•••		80, 1	
Doe v. Benson, 4 B. & A. 588 Doe v. Bevan, 3 M. & S. 353 Doe v. Biggs, 2 Taunt. 109	•••			4	20 , 4 21,	128, 2 422, 4	455
Doe v. Biggs, 2 Taunt. 109	•••	•••	•••	•••	•••		
Doe r. Birch, 1 M. & W. 402	•••	•••	•••	•••	•••	496, 8	

								_	
_									AGE
	Bird, 5 B. & C		•••	•••	•••	•••	•••	•••	350
Doe v.	Bird, 5 B. & A	Ad. 695	•••	•••	•••	•••	•••	•••	15
Doe v.	Bird, 2 A. & I Bird, 6 C. & I	E. 161	•••	•••	•••	•••	•••	•••	357
Doe v.	Bird, 6 C. & I	P. 195	•••	• • •	•••	•••	338,		
Doe v.	Bluck, 8 C. &	: P. 464	•••	•••	•••	•••	•••	•••	482
Dog #	Bold, 11 Q. B	. 127	•••	•••	• • •	•••	•••	•••	476
Doe v.	Bond. 5 B. &	C. 855		•••	•••	•••	•••		174
Dog et	Bond, 5 B. & Bousfield, 6 Q	B. 492 : 1	14 L. J.	Q. B.	42	•••	•••	•••	66
Dog #	Bowditch, 8	D. B. 973 :	15 L. J.	Q. B.	266 : 3	10 Jur.	637	•••	173
Dog v.	Breach, 6 Esp	. 106	•••	•••		•••	•••	•••	497
Dog #	Bridges, 1 B.	& Ad. 847	•••		•••		•••	24,	
Dog v.	Brindley 4 R	AR ISA &	•••	•••	•••		•••		341
Doe v.	Brindley, 4 B. Brown, 7 A. A.	F. 447	•••	•••		•••	•••	78	, 83
Doe v.	Brown, 2 E. &	L D 991 . 9	9 T. T. (1 R 49	12 · 17	Jur 11	61		444
Doe a.	Drown, Z E. o	L D. OOL , 2	22 11. 0 . (ą. <i>D</i> . 10	, .,	·	100,	149	475
Doe a.	Browne, 8 Eas Brydges, 2 D. Burlington (E	st, 100	•••	•••	•••	•••			498
Doe v.	Bryages, 2 D.	ar fly. 29		507	•••	•••	•••		350
Doe v.	Burnington (L	arioi), o d	. & Au.	201	•••	•••	•••	•••	
Doe v.	Burrough, 6	į. В. 229	•••	•••	• • • •	•••	•••	107	43
Doe v.	Burt, 1 T. R.	701	•••	•••	•••	•••	•••	127,	
Doe v.	Butcher, 1 Do	ougl. 50	•••	•••	•••	•••	•••	•••	
Doe v.	Butler, 2 Esp.	. 589			•••	•••	•••		472
Doe v.	Byron, 1 C. B	3. 623 ; 14]	L. J. C.	P. 207	•••	•••	•••	•••	
Doe v.	Cadwallader,	2 B. & Ad.	478	•••	•••	•••	•••	•••	68
Doe v.	Burlington (E Burrough, 6 (Burt, 1 T. R. Butcher, 1 Do Butler, 2 Esp. Byron, 1 C. B Calvert, 2 Car Carew, 2 Q. B	աթ. 387	•••	•••	•••	•••	•••	•••	479
Doe v.	Carew, 2 Q. B Carter, 8 T. R	3. 317; 11 1	L. J. Q.	B. 5;	6 Jur.	457	•••	•••	170
Doe to	Carter, 8 T. R	2. 57, 300	•••	•••	•••	•••	•••	419,	
Dog #	Carter, 9 Q. E	3. 863		•••	•••	•••	•••	413,	571
D	Continuingly 9	R & A 99						107,	
Dog #	Catomore, 16 Cavan, 5 T. R	O B. 745 :	20 L. J	. O. B.	. 364 :	15 Jur	. 726	'	185
1)00 0.	Carun & T R	567						•••	51
Doe v.	Cavall, U. I. I.	M & R 90	18	•••	•••	•••	•••		481
1)08 V.	Chamberleine	KM & W	14	•••			•••	•••	92
1)0e v.	Chamberlaine,	, 0 D1. 6C 17	. 14	•••		•••	•••		476
Doc v.	Chapiin, 5 1a	uul 120	•••	•••	•••		•••		
Doe v.	Church, 5 Car	np. /1	•••	•••	•••	•••		 R5	70
Doe v.	Cavan, 5 T. R Cawdor, 1 Cr. Chamberlaine, Chaplin, 3 Ta Church, 3 Car Clare, 2 T. R. Clarke, Peake	739		•••	•••	•••	•••	65 	249
Doe v.	Clarke, Peake	, Add. Cas.	238	•••		•••	•••	90	148
Doe v .	Clarke, 8 East Clarke, 7 Q. I	t, 185		D 000	T.	404	•••		-
Doe v.	Clarke, 7 Q. I	B. 211; 14	r. i. 6.	B. 233	3;911	ar. 420	•••	•••	
Doe v.	Cockell, 6 N.	& M. 179;	4 A. &	E. 4/8		T **			33 3, 94
Doe v.	Collinge, 7 C.	В. 939; 18	3 L. J. (J. P. 30	05; 13	Jur. 1	91	20	, 94
Dag m	Colling 9 T	R 502				•••	1	•••	
			9 L. J.	C. P. 3	229			•••	481
						2 Jur. 4	54	•••	
Doe v.	Courtenay, 11 Cox, 11 Q. B. Crago, 6 C. B. Crick, 5 Esp.	122; 17 L.	, J, Q. I	3. 8	•••	•••	·	91	
Doe v.	Crago, 6 C. B.	. 90 ; 17 L.	J. C. P	. 263	•••	•••	•••	•••	
Doe to	Crick. 5 Esp.	196	•••	•••	•••	•••	•••	473,	
IIOA 7	Crouch, 2 Cau	UD. 447 ···	•••	•••	•••	•••	•••	•••	
1)04 #	Culliford, 4 D Curwood, 1 H	& Rv. 248		•••	•••	•••	•••	•••	472
Dog #	Curwood 1 H	ar. & W. 14	0	•••	•••	•••	•••	•••	502
Dog #	Darby, 8 Taur	nt 538	•••			•••	•••		480
Doe v.	David, 1 Cr. 1	M A R 405	j	•••	•••		•••	169,	172
1)00 0.	David, I Ol. I	D R14	• •••	•••		•••			169
Doe or	Davies, 6 C. & Davies, 7 Ex.	00		•••	••••	•••	84	 , 93,	434
Doe v.	Davies, / Ex.	ου 2001 - 15	 Inn 166		•••			341,	531
Doe v.	Davis, 10 C. I	3. 821; 10	Jur. 100	,	•••	•••			
Doe v.	Day, 10 East,	427	•••	•••		•••	•••		
Doe v.	Day, 10 East, Day, 13 East,	241	T 0 T	00.0	 		•••	•••	-
Doe v.	Dav. 2 Q. B.	147; 12 L	J. Q. D.	. 00; 0	Jur. 8	19	•••		
Doe v.	Derry, 9 C. &	P. 494	•••	•••			•••	88,	
				•••	•••	•••	•••	•••	402
Doe v.	Dixon, 9 East Dobell, 1 Q. I	3. 806	•••	•••	•••	•••	***	100	1/1
Doe v.	Dold 5 R &	Ad. 689	•••	•••	•••	•••	 101,	130,	149
	Douu, o D. a								468
Doe v.	Donovan, 1 To	aunt. 555;	2 Camp	. 78	•••	•••	•••		
	Dobell, 1 Q. H Dodd, 5 B. & Donovan, 1 To Dunbar, Moo.		2 Camp	. 78	•••	•••	•••		478
	Donovan, 1 To Dunbar, Moo. Durnford, 2 C		2 Camp	. 78 	•••		•••		478

Dee - Deser Man to M 77							498
Doe v. Dyson, Moo. & M. 77 Doe v. Edwards, 5 A. & E. 95	•••	•••	•••	•••	•••		88
Doe v. Edwards, 5 B. & Ad. 1065	•••	•••	•••	•••	•••	•••	77
Doe v. Edwards, 1 M. & W. 553	•••	•••	•••	•••	•••		149
Doe v. Eliot, 2 M. & Ry. 433	•••	•••	•••				476
Doe v. Elsam, Moo. & M. 189	•••	•••	•••		•••	170,	
Doe v. Evans, 9 M. & W. 48	•••	•••		•••	•••		481
Doe v. Eykins, 1 C. & P. 154	710	•••	•••	•••	•••		496
Doe v. Eyre, 3 C. B. 557; 5 C. B. Doe v. Fairclough, 6 M. & S. 40		•••	 	•••	•••	•••	15 473
Doe v. Flynn, 1 C. M. & R. 187	•••	•••	•••		•••	•••	494
Doe v. Forster, 13 East, 405						470.	471
Doe v. Flynn, i C. M. & R. 187 Doe v. Forster, 13 East, 405 Doe v. Forwood, 3 Q. B. 627; 11 Doe v. Foster, 3 C. B. 215; 15 L.	L. J. (Q. B. 3	21	•••	•••	•••	475
Doe v. Foster, 3 C. B. 215; 15 L.	J. C.	P. 263	•••	75,	79, 80,	94,	473
Doe v. Francis, 2 Moo. & R. 57	• • •	•••	•••	•••	•••	78	, 90
Doe v. Francis, 2 Moo. & R. 57 Doe v. Frankis, 11 A. & E. 792 Doe v. Franks, 2 C. & K. 678 Doe v. Frowd, 4 Bing. 557 Doe v. Fuller, Tyr. & G. 17 Doe v. Galloway, 5 B. & Ad. 43 Doe v. Gardiner, 12 C. B. 319; 21	•••	•••	•••		•••	•••	88
Doe n. Franks, 2 C. & A. 0/8	•••	•••	•••	•••	•••	•••	
Doe v. Filler Tvr & G 17	•••	•••	•••	•••	•••	75	479
Doe v. Galloway, 5 B. & Ad. 43		•••				75, 1 32 ,	133
Doe v. Gardiner, 12 C. B. 319; 21	L. J.	C. P. 5	222	•••	•••	93	, 99
Doc c. deckie, b Q. D. OII , ID D.	U. W.	D. 200	, 000		96,	148,	490
Doe v. Gilbert, 5 Q. B. 423 Doe v. Gladwin, 5 Q. B. 953; 14 l		•••			•••	•••	15
Doe v. Gladwin, 5 Q. B. 953; 14	L. J. 🤇	у. В. 1	89;9	Jur. 508	170,	381,	503
Doe v. Godwin, 4 M. & S. 265	•••	•••	•••	•••		170,	
Doe v. Golding, 6 Moo. 231 Doe v. Goldsmith, 2 Cr. & J. 674	•••	•••	•••	•••		•••	220 180
Doe v. Goldwin, 2 Q. B. 143; 10 l	rt () R 2	75	•••	•••	474,	
Doe v. Goodier, 10 Q. B. 957; 16	L. J.	Ö. B. 4	135				
Doe v. Gower, 17 Q. B. 589; 21 L			; 16 J	ur. 100		481,	
Doe v. Grafton, 18 Q. B. 496; 21	L. J.	Q. B. 2	76; 16	Jur. 83	3	468,	
	•••	•••	• • •	•••	•••	132,	
Doe v. Green, 4 Esp. 198	•••		•••	•••	•••	:::	
Doe v. Green, 9 A. & E. 658			07. 11	EE	•••	148,	
Doe v. Groves, 10 Q. B. 486; 16 Doe v. Grubb, 10 B. & C. 816		у. D. Z	97; 11	Jur. 55	o	•••	91 481
Doe r. Guest, 15 M. & W. 160	•••	•••			•••	153,	
	•••			•••			450
Doe r. Guy, 3 East, 120 Doe v. Hales, 7 Bing. 322	•••		•••	•••	•••	•••	68
Doe v. Hall, 5 M. & Gr. 795	•••		•••	•••	•••		477
Doe v. Hare, 2 Cr. & M. 145	•••	•••	•••	•••	•••	•••	
Doe v. Harvey, 1 B. & C. 426	•••	•••		•••	•••	•••	54
Doe v. Hawthorne, 2 B. & A. 96	•••	•••	•••	•••	•••	•••	40
Doe v. Hazell, 1 Esp. 94 Doe v. Hilder, 2 B. & A. 782	•••			•••	•••	•••	467
Doe v. Hiscocks, 5 M. & W. 363	•••	•••	•••	•••	•••		128
Doe v. Hobson, 2 D. & R. 186	•••	•••	•••		•••		178
Doe v. Hobson, 2 D. & R. 186 Doe v. Hogg, 4 D. & Ry. 226	•••						422
Doe v. Hopkinson, & D. & Ry. 507	7 .	•••			•••	•••	128
Doe v. Houghton, 1 Man. & Rv. 2	808	•••	•••	•••	•••	184,	
Doe v. Howard, 11 East, 498 Doe v. Hughes, 7 M. & W. 139	•••	•••	•••	•••	•••	470	
Doe v. Hughes, / M. & W. 139	•••	•••	•••	•••	•••	472,	
Doe v. Hughes, 11 Jur. 698 Doe v. Hulme, 2 M. & Ry. 433	•••	•••	•••	•••	•••	•••	68 476
Doe v. Humphreys, 2 East, 237	•••	•••	•••	•••	•••	•••	479
Doe v. Hunt, 1 M. & W. 690	•••					•••	
Doe v. Ingleby, 15 M. & W. 465	•••		•••	•••	•••		172
Doe v. Inglis, 3 Taunt. 54	•••	•••	• . •	•••	•••		463
Doe v. Jackson, 1 Dougl. 175	•••	•••	•••	•••	•••	•••	474
Doe v. Jackson, 2 Stark. 293	•••			•••	•••		338
Doe v. Jackson, 1 B. & C. 448	•••	•••		•••	•••	•••	92 41
Doe r. Jenkins, 5 Bing. 469	•••	•••	•••	•••	•••	173	228
Doe v. Jepson, 3 B. & Ad. 402 Doe v. Jersey, 1 B. & A. 550	•••	•••	•••	•••	•••		132

								AGE
Doe v.	Johnson, 6 Esp. 10	•••		•••	•••	•••		472
	Johnson, 1 Stark. 411		•••			•••		502
Doe n	Johnston, M'Cl. & Y. 141		•••	•••	•••	•••	480,	
Doe v	Jones, 10 B. & C. 718	•••	•••	•••	•••	•••	91,	
	Jones, 2 C. & K. 743	•••	•••	•••	•••	•••		173
Dos n	Jones, 4 B. & Ad. 126	•••	•••	•••	•••		•••	
Doe #	Jones, 15 M. & W. 580	•••	•••	•••	•••	•••	•••	
	Jones, 5 Ex. 498; 19 L. J			•••	•••	•••		502
Dog n	Keeling 1 M & S 05			•••	•••		•••	357
Doe #	Kennard, 12 Q. B. 244; I	9 Inc	891	•••		•••	159,	
Doe #	Kightly, 7 T. R. 63	. D Uui.	021	•••	•••	•••		472
			•••	•••	•••	•••	151,	
Doe #	Lambler 2 Ren 635	•••	•••	•••	•••	•••		
Doe e	Lambley, 2 Esp. 635 Laming, 4 Camp. 73 Laming, Ry. & M. 36 Langdon, 12 Q. B. 711; 1	•••	 л. Q. В	•••		380,	981	419
Dog e	Laming, 4 Camp. 73 Laming, Ry. & M. 36 Langdon, 12 Q. B. 711; 1	•••	•••	•••	•••	. 000,	901,	422
Doe v.	Langdon 19 O R 711 · 1	IR T. 1	ส ัก า	17 . 1	a Ine	98		76
Dos n	Lawder 1 Sterk 208	10 11. 6	. Q . D		ooui.	<i>5</i> 0	 90,	
Dog v.	Lawder, 1 Stark. 308 Lawrence, 4 Taunt. 23	•••	•••	•••	•••	•••		
		•••	•••	•••	•••	•••	128,	
Doe #	Lowin 10 R & C 879		•••	•••		•••	120,	170
Doe v.	Lea, 11 East, 312 Lewis, 10 B. & C. 673 Lewis, 5 A. & E. 277	•••	•••	•••	•••	64,	949	K00
	Lines, 11 Q. B. 402; 17 I		R 10	 19 - 19 T	 ne 9	```` ' ,		471
Dog e	Lloyd, 3 Esp. 78						•••	126
				•••		•••	•••	141
Doe v.	Long, 9 C. & P. 773	•••	•••	•••	•••	•••		
Doe o	Luces & Wen 159	•••	•••	•••	•••	•••	•••	477
Dog v.	Long, 9 C. & P. 773 Lucas, 5 Esp. 153 Mabberley, 6 C. & P. 126 M'Kaeg, 10 B. & C. 721 Mainby, 10 Q. B. 473; 16	•••	•••	•••	•••	•••	•••	451
Dog v.	McKage 10 R & C 791	•••	•••	•••	•••	•••	 91,	169
Dog v.	Mainby 10 0 B 479 . 14	т. т	0B	909 . 11	T	208	<i>8</i> 1,	400
Dog v.	M'Kaeg, 10 B. & C. 721 Mainby, 10 Q. B. 473; 16 Marchetti, 1 B. & Ad. 715 Martin, 2 W. Bl. 1148 Massey, 17 Q. B. 373; 20 Masters, 2 B. & C. 490	ш. у.	ч . ъ.	000, 1	Jui.	170	171	404
Doe v.	Martin OW RI 1148	•••	•••	•••	•••	110,	111,	192
Due v.	Manney 17 A R 979 - 90	T. T	O B	194 . 15	T	1091	•••	KRK
Dog e	Masters 9 R & C 400	ш. у.	w. D.	tu x , 10	Jui.	1001	•••	407
Dog v.	Matthaws 11 C R 875	•••	•••	•••	•••	•••	147,	470
Dog v.	Many 1 C & P 948 · A P	F.C.	ROR	•••	•••	•••		
Dos #	Maylor 9 M & S 978	. a o.	000	•••	•••	•••	•••	
Dog v.	Wiles 1 Stork 191	•••	•••	•••	•••	•••	466,	400
Dog #	Massey, 17 Q. B. 378; 20 Masters, 2 B. & C. 490 Matthews, 11 C. B. 675 Meux, 1 C. & P. 346; 4 B Meylor, 2 M. & S. 276 Miles, 1 Stark. 181 Miller, 5 C. & P. 595 Miller, 5 C. & P. 595 Milla, 2 A. & E. 17 Milward, 3 M. & W. 328 Mizen, 2 Moo. & R. 56	•••	•••	•••	•••	•••		
Dog #	Milla 9 A & E 17	•••	•••	•••	•••	•••	•••	76
Dog #	Milward S M & W 398	•••	•••	•••	•••	471,		
Dog v.	Milward, 3 M. & W. 328 Mizen, 2 Moo. & R. 56	•••	•••	•••	. • • •	TI L1		401 47R
Doe #	Moffett 15 () R 257 · 10	т. ј	ο ¨R	 498 · 14	Inr	085 04	, 95,	471
Doe v.	Morphett 7 () R 577 · 14	(T. T	ň R	945 - 0	Tue 7	000 01 178		478
Dog #	Morphett, 7 Q. B. 557; 19 Morphett, 7 Q. B. 577; 14 Morris, 2 Taunt. 52 Morse, 1 B. & Ad. 365	и ш. о.	ų. <i>D</i> .	010,0	<i>o</i> ui. <i>i</i>	70		348
Dog #	Moree 1 R & Ad 865	•••	•••	•••	•••	94, 95	98	917
Dog v.	Mulliner, 1 Esp. 460 Murrell 8 C & P 184	•••	•••	•••	•••		,	585
Doe #	Murrell, 8 C. & P. 184		•••	•••				462
Doe o	Oliver, 10 B. & C. 181; 2 Olley, 10 A. & E. 481	Sm T		thed 7	'nR	•••	•••	74
Doe v.	Olley, 10 A. & E. 481	ош. 1	. 0. 10	on ca.	-	•••	•••	83
Dog v.	Ongley, 10 C. B. 25; 20 L	i c	P 26		•••		68,	
Dog v.	Ongley, 10 C. D. 20, 20 D.		1. 20	•••	•••	•••		131
Doe #	Ovenhem 7 M & W 131	•••	•••	•••		•••	•••	
Doe e	Palmar 16 Fast 58	•••	•••	•••	•••	•••	•••	
Doe 4	Osborne, 4 Jur. 941 Oxenham, 7 M. & W. 131 Palmer, 16 East, 53 Parker, Gow, 180 Parkin, 5 Taunt. 321 Pasquali, Peake, N. P. C. Paul, 3 C. & P. 613 Payue, 1 Stark. 86 Pearsev. 7 B. & C. 304	•••	•••	•••	•••	•••		494
Dog v.	Parkin & Taunt 991	•••	•••	•••	•••			133
Doe #	Pasonali Pasta N D C	198	•••	•••	•••	•••		481
Doe #	Poul S.C. & D. A.S.		•••	•••	•••	•••	497,	
Doe e	Davia 1 Starl 28	•••	•••	•••	•••			490 421
Dog v.	Dogwood 7 R & C 204	•••	•••	•••	•••	•••		1 21
					•••	•••	3 80,	
Doe =	Peck, 1 B. & Ad. 428	•••	•••	•••	•••	•••	000,	198
Dog #	Perrip 9 C & P. 312	•••	•••	•••	•••	•••		120 171)
	Perrin, 9 C. & P. 467	•••		•••	•••	•••	175,	105
1)oc	Phillips, 2 Bing. 13				•••			195 481
DUG U.	Pittman, 2 Nev. & M. 678	•••	•••	•••	•••	•••	•••	101

						P.A	LG R
Doe v. Poole, 11 Q. B. 713; 1	7 L. J. (Q. B. 14	13; 12	Jur. 450)	4	489
Doe v. Porter, 3 T. R. 13	•••	•••	•••	•••	•••	450, 4	
Doe v. Powell, 5 B. & C. 308 Doe v. Powell, 8 Sc. N. R. 687	7 . 7 N	* C-	090 - 1	4 T T	CPK	420, 4	190
Jur. 1128	, , , ,,,,	a. ur.	9 00, 1				79
Jur. 1128	• •••					463,	
Doe v. Price, 8 C. B. 894; 19	L. J. C.	P. 121	•••		•••	211,	
Doe v. Pritchard, 5 B. & Ad. 7		•••	•••	•••	169,	172,	
Doe v. Pullen, 2 Bing. N. C. 7		•••	•••	•••		•••	91
Doe v. Pyke, 5 M. & S. 146	• •••	•••	•••			, 91,	492 482
Doe v. Quigley, 2 Camp. 505 Doe v. Radcliffe, 10 East, 278		•••	•••	•••			58
Doe v. Raffan, 6 Esp. 4		•••	•••	•••	•••	•••	
Doe v. Ramsbotham, 8 M. & S		•••	•••	•••	•••		77
Doe v. Read, 12 East, 57		•••	•••	•••	•••		476
Doe v. Rees, 4 Bing. N. C. 384		•••	•••	•••	•••	169,	
Doe v. Rees, 6 C. & P. 610		•••	•••	•••	•••	945	
Doe v. Reid, 10 B. & C. 849		••	•••		•••	865, i	300 51
Doe v. Rendle, 3 M. & S. 99 Doe v. Rhodes, 11 M. & W. 66		•••		•••	•••	•••	
Doe r. Rickarby, 5 Esp. 4		•••	•••	•••	•••	•••	
Doe v. Ridout, 5 Taunt. 519		•••		•••	•••		
Doe v. Ries, 8 Bing, 178				•••	•••	80,	
Doe v. Roberts, 16 M. & W. 7	78			•••	•••	•••	
Doe v. Robinson, 3 Bing. N. (J. 677 ;	1 Jur. a	356	•••	•••		476
Doe v. Robson, 2 C. & P. 245 Doe v. Rock, Car. & M. 549;	. W.	. ~	٠. :::	T ;; C	D 104		497
Ine 986	4 M. a	Gr. o	U; II	II. J. U.		92	4R4
Jur. 266		•••	•••	•••	••••		
Doe v. Roe, 2 B. & Ad. 922			•••		•••		575
Doe v. Roe, 5 D. & L. 272		•••	•••	•••			498
					•••		498
Doe v. Roe, 1 E. & B. 279 Doe v. Rollings, 4 C. B. 188;	· ···	~ :		•••	•••		188
Doe v. Rollings, 4 C. B. 188;	17 L. J	. C. P.	268	•••	•••	41,	
Doe v. Rowe, Ry. & M. 348;	2 U. & 1 94	. 240	•••	•••	•••		381 346
Doe v. Rowlands, 9 C. & P. 73 Doe v. Rugeley, 6 Q. B. 107;	18 L. J	M.C.	187	Jur 6	15		357
Doe v. Samuel, 5 Esp. 173						97,	
LIGHT SANDORN LIK /US				•••	•••	156,	
Doe v. Sayer, 3 Camp. 8 Doe v. Scott, 6 Bing. 362					•••	•••	
Doe v. Sayer, 3 Camp. 8 Doe v. Scott, 6 Bing. 362 Doe v. Seaton, 2 Cr. M. & R.		··:.		•••	•••		470
Doe v. Seaton, 2 Cr. M. & K.	728:5	L. J. E.	K. 73	•••	•••	•••	
Doe v. Sharpley, 15 M. & W.	558	•••	•••	•••	•••	990	
Doe v. Sharpley, 15 M. & W. Doe v. Shewin, 3 Camp. 134 Doe v. Slight, 1 Dowl. 168	• •••	•••	•••	•••	•••	380,	187
Doe v. Smaridge, 7 Q. B. 957	14 L	J. O. B	827 :	9 Jur. 7	81	•••	
Doe v. Smith, 2 T. R. 436				•••	•••	10.	175
Doe a Smith 5 Tount 795					490	436,	45
Doe v. Smith, 5 Taunt. 795 Doe v. Smith, 6 East, 530 Doe v. Smith, 1 Man. & By. 1 Doe v. Smith, 5 A. & E. 350 Doe v. Smith, 8 A. & E. 255; Doe v. Smythe, 4 M. & S. 347 Doe v. Snowden, 2 W. Bl. 122 Doe v. Somerton, 7 Q. B. 58; Doe v. Spence, 6 East, 120				•••	•••	79,	148
Doe v. Smith, 1 Man. & Ry. 1	37	•••	•••	•••	•••		94
Doe v. Smith, 5 A. & E. 350	0.7		•••	•••	•••	•••	
Doe of Smytha 4 M & G 047	z Jur.	094	•••	•••	•••	83, 75	999
Doe v. Snowden. 2 W. Rl 199	4	•••	•••	•••	" '5	466	479
Doe v. Somerton, 7 O. B. 58:	14 L. J	. Q. B	210:9	Jur. 77	'5		479
Doe v. Spence, 6 East, 120		. 4. 2.	•••		•••		472
Doe v. Spiller, 6 Esp. 70		•••		•••			478
Doe v. Spry, 1 B. & A. 617		•••	•••	•••	•••	•••	359
Doe v. Stagg, 5 Bing. N. C. 5	64;8J	ur. 1127	• •••	•••	•••		485
Doe v. Stanion, 1 M. & W. 69	5	•••	•••	•••	•••	481,	
Doe v. Stapleton, 3 C. & P. 27		•••	•••	•••	•••		472
Doe v. Steel, 3 Camp. 115		•••	•••	•••	•••	472,	145
Doe v. Steele, 4 Q. B. 663 Doe v. Stennett, 2 Esp. 717		•••	•••	•••	•••	•••	92
•	• •••	•••	•••	***			
L.T.							

						_	
Doe v. Stephens, 6 Q. B. 208 Doe v. Stevens, 3 B. & Ad. 299; Doe v. Steward, 1 A. & E, 300 Doe v. Stratton, 4 Bing. 446 Doe v. Sturges, 7 Taunt. 217 Doe v. Summersett, 1 B. & Ad. 1 Doe v. Sutton, 9 C. & P. 706 Doe v. Taniere, 12 Q. B. 998; 18 Doe v. Terry. 4 A. & E. 274						51	AGE K4
Doe v. Stevens. 3 B. & Ad. 299:	1 L. J.	К. В.	101	•••	158	. 170.	171
Doe v. Steward, 1 A. & E. 300	,			•••	•••		99
Doe v. Stratton, 4 Bing. 446	•••	•••	•••	•••	•••	95,	471
Doe v. Sturges, 7 Taunt. 217	•••	•••		•••	•••	61,	451
Doe v. Summersett, 1 B. & Ad. 1	35	•••	••• ,	,	•••	63,	476
Doe v. Sutton, 9 C. & P. 706					338	, 380,	497
Doe v. Taniere, 12 Q. B. 998; 18	L. J. 4). B. 49	9;13.	Jur. 119	9 26,	94, 95	, 96
Doe v. Terry, 4 A. & E. 274	•••	•••	•••	•••	•••	•••	88
Doe v. Thomas, y B. & C. 288	T 17-		•••	•••	•••	•••	492
Doe v. Inomas, o Ex. 854; 20 L.	J. EX.	30/ .	•••	•••	•••		404
Doe w Thompson 0 O B 1097	11 1	1007	• •••	•••	•••	•••	24
Doe of Tidhury 14 C R 804 · 99	I. 1	TOUI	7 . 18	Inr 44	8	•••	KRK
Doe v. Timothy, 2 C. & K. 851			. , 40			•••	472
Doe v. Tom. 4 Q. B. 615: 12 L.	J. Ö. B	. 264 :	7 Jur.	847	•••	•••	83
Doe v. Tresidder, 1 Q. B. 416: 1	0 L. J.	Q. B.	160	•••	•••	•••	66
Doe v. Turford, 3 B. & Ad. 890;	1 L. J.	Ř. В.	262	•••		•••	479
Doe v. Turner, 7 M. & W. 226; 9	M. &	W. 648	3	9	90, 462,	464,	571
Doe v. Taniere, 12 Q. B. 998; 18 Doe v. Terry, 4 A. & E. 274 Doe v. Thomas, 9 B. & C. 288 Doe v. Thomas, 6 Ex. 854; 20 L. Doe v. Thomas, 9 A. & E. 556 Doe v. Thompson, 9 Q. B. 1037; Doe v. Tidbury, 14 C. B. 304; 23 Doe v. Timothy, 2 C. & K, 351 Doe v. Tom, 4 Q. B. 615; 12 L Doe v. Tresidder, 1 Q. B. 416; 1 Doe v. Turford, 3 B. & Ad. 890; Doe v. Turner, 7 M. & W. 226; 9 Doe v. Ulph, 13 Q. B. 204; 18 L Doe v. Vince, 2 Camp. 256	. J. Q.	B. 106	; 18 J	ur. 276	i	•••	380
Doe v. Vince, 2 Camp. 256	_•••_			•••	•••	•••	470
Doe v. Vince, 2 Camp. 256 Doe v. Walker, 5 B. & C. 111; 4 Doe v. Walker, 10 B. & C. 626 Doe v. Wandlass, 7 T. R. 117 Doe v. Watkins, 7 East, 551 Doe v. Watson, 2 Stark. 230 Doe v. Watt, 1 M. & Ry. 694; 8	L. J. (O. S.)	K. B.	93	•••	191,	483
Doe v. Walters, 10 B. & C. 626	•••	. . • • •	•••	•••	•••	•••	475
Doe v. Wandlass, 7 T. R. 117	•••	•••	•••	•••	•••	470	497
Doe v. Watkins, / East, Dol	•••	•••	•••	•••	•••	472,	1/0
Doe v. Watson, 2 Stark. 250	R &	رت ۱۳۰۶ م	T.	i''(0	g'i k	ъ	"
185	<i>D</i> . a.	C. 500	, о в	ψ. (V .	. ij., ik.	180	495
Doe v Watta 7 T. R. 83	•••	•••	•••	49 54	93. 94	1.95.	466
Doe v. Webster, 12 A. & E. 442		•••			, 00, 0.	.,	127
Doe v. Weller, 7 T. R. 478	•••	•••	•••	•••	19. 5	5. 97.	471
Doe v. Weller, 1 Jur. 622	•••	•••	•••	•••		., .,	221
Doe v. Wells, 10 A. & E. 427; 3	Jur. 82	0	•••	•••	•••	481,	494
Doe v. Whitehead, 8 A. & E. 571	. A T	. 409				•	407
	; Z Jui	. 493	•••	•••	•••	•••	481
Doe v. Whitroe, D. & Ry. N. P. 1	; 2 Ju		•••	•••	•••	•••	76
Doe v. Whitroe, D. & Ry. N. P. 1 Doe v. Whittick, Gow, 195	; z Jui		 	 - ***			76 481
Doe v. Whitroe, D. & Ry. N. P. 1 Doe v. Whittick, Gow, 195 Doe v. Wiggins, 4 Q. B. 367; 12	; 2 Jui L. J. Ç	 2. B. 1	 77 ; 7	 Jur. 52	9	78,	76 481 128
Doe v. Whitroe, D. & Ry. N. P. 1 Doe v. Whittick, Gow, 195 Doe v. Wilkinson, 12 A. & E. 74:	; 2 Jui L. J. Q 3	 2. B. 1	77;7	 Jur. 52	9	78,	76 481 123 473
Doe v. Whitroe, D. & Ry. N. P. 1 Doe v. Whittick, Gow, 195 Doe v. Wiggins, 4 Q. B. 367; 12 Doe v. Wilkinson, 12 A. & E. 74: Doe v. Williams, 7 C. & P. 322	; 2 Jui L. J. Ç 3). B. 1	;; 7 ;; 7	 Jur. 52 	9 	78, 277,	76 481 123 473 501
Doe v. Whittoe, D. & Ry. N. P. 1 Doe v. Whittiek, Gow, 195 Doe v. Wiggins, 4 Q. B. 367; 12 Doe v. Wilkinson, 12 A. & E. 74; Doe v. Williams, 7 C. & P. 822 Doe v. Williams, 7 C. & P. 832 Doe v. Williams, 7 R. & C. Al	 L. J. Q 3). B. 1	77;7	Jur. 52	9	78, 277,	76 481 128 473 501 565
Doe v. Whitroe, D. & Ry. N. P. 1 Doe v. Whittiek, Gow, 195 Doe v. Wiggins, 4 Q. B. 367; 12 Doe v. Wilkinson, 12 A. & E. 74; Doe v. Williams, 7 C. & P. 322 Doe v. Williams, 7 C. & P. 382 Doe v. Williams, 6 B. & C. & P. 382 Doe v. Williams, 11 O. R. 888: 1	; 2 Ju L. J. Q 3), B. 1	77; 7	Jur. 52	9	78, 277,	76 481 128 473 501 565 477
Doe v. Whitroe, D. & Ry. N. P. 1 Doe v. Whittiek, Gow, 195 Doe v. Wiggins, 4 Q. B. 367; 12 Doe v. Wilkinson, 12 A. & E. 74; Doe v. Williams, 7 C. & P. 322 Doe v. Williams, 7 C. & P. 332 Doe v. Williams, 6 B. & C. 41 Doe v. Williams, 11 Q. B. 688; 1 Doe v. Wilson, 5 B. & A. 363	L. J. Q 3 7 L. J.	Q. B. 1	77; 7	Jur. 52	9	78, 277, 	76 481 128 473 501 565 477 142
Doe v. Whitroe, D. & Ry. N. P. 1 Doe v. Whittick, Gow, 195 Doe v. Wiggins, 4 Q. B. 367; 12 Doe v. Wilkinson, 12 A. & E. 74; Doe v. Williams, 7 C. & P. 322 Doe v. Williams, 7 C. & P. 382 Doe v. Williams, 6 B. & C. 41 Doe v. Williams, 11 Q. B. 688; 1 Doe v. Wilson, 5 B. & A. 363 Doe v. Withers, 2 B. & Ad. 896:	; 2 Ju L. J. Q 3 7 L. J.	Q. B. 1	77; 7	Jur. 52	9	78, 277, 	76 481 128 473 501 565 477 142 51
Doe v. Whitroe, D. & Ry. N. P. 1 Doe v. Whittick, Gow, 195 Doe v. Wiggins, 4 Q. B. 367; 12 Doe v. Wilkinson, 12 A. & E. 74; Doe v. Williams, 7 C. & P. 322 Doe v. Williams, 7 C. & P. 382 Doe v. Williams, 6 B. & C. 41 Doe v. Williams, 11 Q. B. 688; 1 Doe v. Wilson, 5 B. & A. 363 Doe v. Withers, 2 B. & Ad. 896; Doe v. Wood, 2 B. & Al. 724	, z Jui L. J. Q 3 7 L. J.	Q. B. 1	77; 7	Jur. 52 2 Jur	9 9 455	78, 277,	76 481 128 473 501 565 477 142 51 156 215
Doe v. Whitroe, D. & Ry. N. P. 1 Doe v. Whittiek, Gow, 195 Doe v. Wiggins, 4 Q. B. 367; 12 Doe v. Wilkinson, 12 A. & E. 74: Doe v. Williams, 7 C. & P. 322 Doe v. Williams, 6 B. & C. 41 Doe v. Williams, 6 B. & C. 41 Doe v. Williams, 11 Q. B. 688; 1 Doe v. Wilson, 5 B. & A. 363 Doe v. Withers, 2 B. & Ad. 896; Doe v. Wood, 2 B. & Al. 724 Doe v. Wood, 14 M. & W. 682; 1	; 2 Jui L. J. Q 3 7 L. J. 1 L. J	Q. B. 1	77; 7; 7;	Jur. 52 2 Jur	9 9 455 30, 213,	78, 277, 155, 214, 3, 94,	76 481 128 473 501 565 477 142 51 156 215 96,
Doe v. Whitroe, D. & Ry. N. P. 1 Doe v. Whittiek, Gow, 195 Doe v. Wiggins, 4 Q. B. 367; 12 Doe v. Wilkinson, 12 A. & E. 74; Doe v. Williams, 7 C. & P. 822 Doe v. Williams, 6 B. & C. 41 Doe v. Williams, 6 B. & C. 41 Doe v. Williams, 11 Q. B. 688; 1 Doe v. Williams, 12 A. & 683 Doe v. Withers, 2 B. & Ad. 896; Doe v. Wood, 2 B. & Al. 724 Doe v. Wood, 14 M. & W. 682; 1	; 2 Ju L. J. Q 3 7 L. J. 1 L. J 5 L. J.	Q. B. 1	77; 7, 154; 1 38	Jur. 52 2 Jur	9 9 455 30, 218,	78, 277, 155, 214, 3, 94, 450,	76 481 128 473 501 565 477 142 51 156 215 96,
Doe v. Watt, 1 M. & Ry. 694; 8 185 Doe v. Watts, 7 T. R. 83 Doe v. Webster, 12 A. & E. 442 Doe v. Weller, 7 T. R. 478 Doe v. Weller, 1 Jur. 622 Doe v. Weller, 1 Jur. 622 Doe v. Weller, 1 Jur. 622 Doe v. Whitohead, 8 A. & E. 571 Doe v. Whitohead, 8 A. & E. 571 Doe v. Whitohead, 8 A. & E. 571 Doe v. Wiltiek, Gow. 195 Doe v. Wilkinson, 12 A. & E. 741 Doe v. Wilkinson, 12 A. & E. 742 Doe v. Williams, 7 C. & P. 332 Doe v. Williams, 6 B. & C. 41 Doe v. Williams, 6 B. & C. 41 Doe v. Wilson, 5 B. & A. 363 Doe v. Withers, 2 B. & A. 363 Doe v. Withers, 2 B. & A. 896; Doe v. Wood, 2 B. & Al. 724 Doe v. Wood, 14 M. & W. 682; 1 Doe v. Woodbridge, 9 B. & C. 376	; 2 Ju L. J. Q 3 7 L. J. 1 L. J 5 L. J.	Q. B. 1'	77; 7, 154; 1 38	Jur. 52 2 Jur 2 Jur	9 9 455 30, 218,	78, 277, 155, 214, 3, 94, 450, 358,	76 481 128 473 501 565 477 142 51 156 215 96, 491 502
Doe v. Whitroe, D. & Ry. N. P. 1 Doe v. Whittick, Gow, 195 Doe v. Wiggins, 4 Q. B. 367; 12 Doe v. Wilkinson, 12 A. & E. 74; Doe v. Wilkinson, 7 C. & P. 322 Doe v. Williams, 7 C. & P. 332 Doe v. Williams, 6 B. & C. 41 Doe v. Williams, 11 Q. B. 688; 1 Doe v. Wilson, 5 B. & A. 363 Doe v. Withers, 2 B. & Ad. 896; Doe v. Wood, 2 B. & Al. 724 Doe v. Wood, 14 M. & W. 682; 1 Doe v. Woodbridge, 9 B. & C. 376 Doe v. Woodman, 8 East, 228	; 2 Jul. ; L. J. ; 7 L. J. 1 L. J. 5 L. J. 	Q. B. 1'	77; 7 154; 1 88 1; 9 Ju	Jur. 52 2 Jur 2 Jur	455 30, 213,	78, 277, 155, 214, 3, 94, 450, 358,	76 481 128 473 501 565 477 142 51 156 215 96, 491 502 478
Doe v. Whitroe, D. & Ry. N. P. 1 Doe v. Whittick, Gow, 195 Doe v. Wiggins, 4 Q. B. 367; 1 Doe v. Wilkinson, 12 A. & E. 74; Doe v. Wilkinson, 7 C. & P. 322 Doe v. Williams, 7 C. & P. 332 Doe v. Williams, 6 B. & C. 41 Doe v. Williams, 11 Q. B. 688; 1 Doe v. Williams, 12 B. & A. 363 Doe v. Wilson, 5 B. & A. 363 Doe v. Withers, 2 B. & Al. 724 Doe v. Wood, 2 B. & Al. 724 Doe v. Wood, 14 M. & W. 682; 1 Doe v. Woodbridge, 9 B. & C. 376 Doe v. Woodbridge, 9 B. & C. 376 Doe v. Woodman, 8 East, 228 Doe v. Woombwell, 2 Camp. 559	7 L. J. 1 L. J. 5 L. J.	Q. B. 1	77; 7 154; 1 188 1; 9 Ju	Jur. 52 2 Jur 2 Jur	455 30, 213,0 9	78, 277, 155, 214, 3, 94, 450, 358,	76 481 128 473 501 565 477 142 51 156 215 96, 491 502 478
Doe v. Whitroe, D. & Ry. N. P. 1 Doe v. Whittiek, Gow, 195 Doe v. Wiggins, 4 Q. B. 367; 12 Doe v. Wilkinson, 12 A. & E. 74: Doe v. Williams, 7 C. & P. 322 Doe v. Williams, 6 B. & C. 41 Doe v. Williams, 6 B. & C. 41 Doe v. Williams, 11 Q. B. 688; 1 Doe v. Williams, 11 Q. B. 688; 1 Doe v. Wilson, 5 B. & Ad. 896; Doe v. Wood, 2 B. & Ad. 724 Doe v. Wood, 14 M. & W. 682; 1 Doe v. Woodbridge, 9 B. & C. 376 Doe v. Woodbridge, 9 B. & C. 376 Doe v. Woodbridge, 9 Camp. 559 Doe v. Woodbwell, 2 Camp. 559 Doe v. Woodbwell, 2 Camp. 559 Doe v. Woodby, 1 Camp. 20	7 L. J. C. J. L. J. S. L. J. S. L. J. S	Q. B. 1	77; 7	Jur. 52 2 Jur 2 Jur	455	78, 277, 155, 214, 3, 94, 450, 358,	76 481 128 473 501 565 477 142 515 96, 491 502 478 471
Doe v. Whitroe, D. & Ry. N. P. 1 Doe v. Whittick, Gow, 195 Doe v. Wiggins, 4 Q. B. 367; 12 Doe v. Wigkinson, 12 A. & E. 74; Doe v. Wilkinson, 12 A. & E. 74; Doe v. Williams, 7 C. & P. 832 Doe v. Williams, 6 B. & C. 41 Doe v. Williams, 11 Q. B. 688; 1 Doe v. Williams, 11 Q. B. 688; 1 Doe v. Williams, 2 B. & Ad. 896; Doe v. Withers, 2 B. & Ad. 896; Doe v. Wood, 2 B. & Al. 724 Doe v. Wood, 14 M. & W. 682; 1 Doe v. Woodbridge, 9 B. & C. 376 Doe v. Woodbridge, 9 B. & C. 376 Doe v. Woodbridge, 12 Camp. 559 Doe v. Worsley, 1 Camp. 20 Doe v. Wightman, 4 Esp. 5	; 2 Ju L. J. G 3 7 L. J. 1 L. J 5 L. J.	Q. B. 1	77; 7	Jur. 52 2 Jur	9 9 455 30, 213,	78, 277, 155, 214, 3, 94, 450, 358,	76 481 128 473 501 565 477 142 51 156 215 96, 491 491 418 477
Doe v. Whitroe, D. & Ry. N. P. 1 Doe v. Whittick, Gow, 195 Doe v. Wiggins, 4 Q. B. 367; 12 Doe v. Wilkinson, 12 A. & E. 74; Doe v. Wilkinson, 12 A. & E. 74; Doe v. Williams, 7 C. & P. 322 Doe v. Williams, 6 B. & C. 41 Doe v. Williams, 11 Q. B. 688; 1 Doe v. Williams, 11 Q. B. 688; 1 Doe v. Williams, 2 B. & Ad. 896; Doe v. Wood, 2 B. & Al. 724 Doe v. Wood, 14 M. & W. 682; 1 Doe v. Woodbridge, 9 B. & C. 376 Doe v. Woodman, 8 East, 228 Doe v. Woombwell, 2 Camp. 559 Doe v. Worsley, 1 Camp. 20 Doe v. Wightman, 4 Esp. 5 Doe v. Warborough, 1 Bing. 24	7 L. J. C. 1 L. J. S. L. J. S. L. J. S	Q. B. 1' Q. B. 4' Ex. 4'	77; 7	Jur. 52	455 30, 213, 0 9	78, 277, 155, 214, 3, 94, 450, 358,	797 76481 128473 5655 477 142 156 477 156 491 471 4477 250
Doe v. Whitroe, D. & Ry. N. P. 1 Doe v. Whittick, Gow, 195 Doe v. Wiggins, 4 Q. B. 367; 12 Doe v. Wilkinson, 12 A. & E. 74; Doe v. Wilkinson, 12 A. & E. 74; Doe v. Williams, 7 C. & P. 322 Doe v. Williams, 6 B. & C. 41 Doe v. Williams, 6 B. & C. 41 Doe v. Williams, 11 Q. B. 688; 1 Doe v. Wilson, 5 B. & A. 363 Doe v. Wilson, 5 B. & Ad. 896; Doe v. Wood, 2 B. & Al. 724 Doe v. Wood, 14 M. & W. 682; 1 Doe v. Woodman, 8 East, 228 Doe v. Woodman, 8 East, 228 Doe v. Woodman, 8 East, 228 Doe v. Worsley, 1 Camp. 20 Doe v. Wrightman, 4 Esp. 5 Doe v. Yarborough, 1 Bing. 24 Doherty v. Allman, 3 App. Cas. 7 Dolby v. Hea 11 A. & F. 225	7 L. J. G. T. J.	Q. B. 1' Q. B. 4' L. T.	77; 7	2 Jur. 52 Jur	455 9 9 470,	78,	797 764 481 128 473 565 477 142 156 471 156 491 477 250 471 3830
Doe v. Whitroe, D. & Ry. N. P. 1 Doe v. Whittick, Gow, 195 Doe v. Wiggins, 4 Q. B. 367; 1 Doe v. Wiggins, 4 Q. B. 367; 1 Doe v. Wilkinson, 12 A. & E. 74; Doe v. Williams, 7 C. & P. 322 Doe v. Williams, 7 C. & P. 332 Doe v. Williams, 11 Q. B. 688; 1 Doe v. Williams, 11 Q. B. 688; 1 Doe v. Wilson, 5 B. & A. 363 Doe v. Wilson, 5 B. & Ad. 896; Doe v. Wood, 2 B. & Al. 724 Doe v. Wood, 14 M. & W. 682; 1 Doe v. Woodbridge, 9 B. & C. 376 Doe v. Woodbridge, 9 B. & C. 376 Doe v. Woorsley, 1 Camp. 20 Doe v. Worsley, 1 Camp. 20 Doe v. Wrightman, 4 Esp. 5 Doe v. Yarborough, 1 Bing. 24 Doherty v. Allman, 3 App. Cas. 7 Dolby v. Iles, 11 A. & E. 335 Dollen v. Batt. 4 C. R. N. S. 780	7 L. J. G. T. J. G. J. J. G. J. G. J. G. J. G.	Q. B. 1'	77; 7	Jur. 52	9 9 455 30, 213, 1 9 470, 3. 513	78, 277, 155, 214, 3, 94, 450, 358, 473,	797 76 481 128 473 565 477 142 156 471 156 491 215 471 413 477 250 350 3450
Doe v. Woodman, 8 East, 228 Doe v. Woombwell, 2 Camp. 559 Doe v. Worsley, 1 Camp. 20 Doe v. Wrightman, 4 Esp. 5 Doe v. Yarborough, 1 Bing. 24 Doherty v. Allman, 3 App. Cas. 7 Dolby v. Ilea, 11 A. & E. 335 Dollen v. Batt, 4 C. B. N. S. 760	 09; 39 ; 27 L.	L. T.	129 ; 2	26 W. I	470, 3. 513	473,	478 471 413 477 25 850 830 450
Doe v. Woodman, 8 East, 228 Doe v. Woombwell, 2 Camp. 559 Doe v. Worsley, 1 Camp. 20 Doe v. Wrightman, 4 Esp. 5 Doe v. Yarborough, 1 Bing. 24 Doherty v. Allman, 3 App. Cas. 7 Dolby v. Ilea, 11 A. & E. 335 Dollen v. Batt, 4 C. B. N. S. 760	 09; 39 ; 27 L.	L. T.	129 ; 2	26 W. I	470, 3. 513	473,	478 471 413 477 25 850 830 450
Doe v. Woodman, 8 East, 228 Doe v. Woombwell, 2 Camp. 559 Doe v. Worsley, 1 Camp. 20 Doe v. Wrightman, 4 Esp. 5 Doe v. Yarborough, 1 Bing. 24 Doherty v. Allman, 3 App. Cas. 7 Dolby v. Ilea, 11 A. & E. 335 Dollen v. Batt, 4 C. B. N. S. 760	 09; 39 ; 27 L.	L. T.	129 ; 2	26 W. I	470, 3. 513	473,	478 471 413 477 25 850 830 450
Doe v. Woodman, 8 East, 228 Doe v. Woombwell, 2 Camp. 559 Doe v. Worsley, 1 Camp. 20 Doe v. Wrightman, 4 Esp. 5 Doe v. Yarborough, 1 Bing. 24 Doherty v. Allman, 3 App. Cas. 7 Dolby v. Ilea, 11 A. & E. 335 Dollen v. Batt, 4 C. B. N. S. 760	 09; 39 ; 27 L.	L. T.	129 ; 2	26 W. I	470,	473,	478 471 413 477 25 850 830 450
Doe v. Woodman, 8 East, 228 Doe v. Woombwell, 2 Camp. 559 Doe v. Worsley, 1 Camp. 20 Doe v. Wrightman, 4 Esp. 5 Doe v. Yarborough, 1 Bing. 24 Doherty v. Allman, 3 App. Cas. 7 Dolby v. Ilea, 11 A. & E. 335 Dollen v. Batt, 4 C. B. N. S. 760	 09; 39 ; 27 L.	L. T.	129 ; 2	26 W. I	470,	473,	478 471 413 477 25 850 830 450
Doe v. Woodman, 8 East, 228 Doe v. Woombwell, 2 Camp. 559 Doe v. Worsley, 1 Camp. 20 Doe v. Wrightman, 4 Esp. 5 Doe v. Yarborough, 1 Bing. 24 Doherty v. Allman, 3 App. Cas. 7 Dolby v. Ilea, 11 A. & E. 335 Dollen v. Batt, 4 C. B. N. S. 760	 09; 39 ; 27 L.	L. T.	129 ; 2	26 W. I	470,	473,	478 471 413 477 25 850 830 450
Doe v. Woodman, 8 East, 228 Doe v. Woombwell, 2 Camp. 559 Doe v. Worsley, 1 Camp. 20 Doe v. Wrightman, 4 Esp. 5 Doe v. Yarborough, 1 Bing. 24 Doherty v. Allman, 3 App. Cas. 7 Dolby v. Ilea, 11 A. & E. 335 Dollen v. Batt, 4 C. B. N. S. 760	 09; 39 ; 27 L.	L. T.	129 ; 2	26 W. I	470,	473,	478 471 413 477 25 850 830 450
Doe v. Whitroe, D. & Ry. N. P. 1 Doe v. Whittick, Gow, 195 Doe v. Wiggins, 4 Q. B. 367; 12 Doe v. Wilkinson, 12 A. & E. 74: Doe v. Williams, 7 C. & P. 322 Doe v. Williams, 7 C. & P. 332 Doe v. Williams, 6 B. & C. 41 Doe v. Williams, 11 Q. B. 688; 1 Doe v. Williams, 11 Q. B. 688; 1 Doe v. Williams, 2 B. & Ad. 896; Doe v. Wood, 2 B. & Al. 724 Doe v. Wood, 2 B. & Al. 724 Doe v. Wood, 14 M. & W. 682; 1 Doe v. Woodbridge, 9 B. & C. 376 Doe v. Woodbridge, 9 B. & C. 376 Doe v. Woodbridge, 9 Camp. 559 Doe v. Woodbridge, 1 Camp. 20 Doe v. Worsley, 1 Camp. 20 Doe v. Worsley, 1 Camp. 20 Doe v. Wrightman, 4 Esp. 5 Doe v. Yarborough, 1 Bing. 24 Doherty v. Allman, 3 App. Cas. 7 Dolby v. Iles, 11 A. & E. 335 Dollen v. Batt, 4 C. B. N. S. 760 Dolling v. Evans, 36 L. J. Ch. 47. Domvile v. Colville, Ir. R. 7 C. L. 5. Donegan v. Neill, 16 L. R. Ir. 305 Donellan v. Road, 3 B. & Ad. 899 Donuell v. Church, 4 Ir. Eq. R. 6 Donnison v. People's Café Co., 45 Dorrell v. Collins, Cro. Eliz. 6	 09; 39 ; 27 L.	L. T.	129 ; 2	26 W. I	470,	473,	478 471 413 477 25 850 830 450

Dougal v. McCarthy, '98, 1 Q. B. 786 699; 41 W. R. 484	; 62 L.	J. Q. B. 4	62 ; 68 I	PAGE 1. T. 92, 95
Doughty v. Bowman, 11 Q. B. 444:	17 L. J.	Q. B. 1	11; 12	Jur.
Doughty v. Stiles, Rep. t. Finch, 115 Douse v. Earle, 3 Lev. 264; 2 Ventr. 12t Dowden and Pook v. Pook, '04, 1 K. L. T. 688; 52 W. R. 97; 20 T. L. 1 Dowell v. Dew, 1 Y. & C. C. C. 345; 12			•••	70
Douse v. Earle, 3 Lev. 264; 2 Ventr. 120	8			340
Dowden and Pook v. Pook, '04, 1 K.	B. 45;	73 L. J.	K. B. 38	; 89
Dowell v. Dew. 1 Y. & C. C. C. 345: 12	L. J. Ch.	158	5	4 55, 118
Downs v. Cooper, 2 Q. B. 256; 11 L. J.	Q. B. 2;	6 Jur. 6	22	77
Doyle and O'Hara's Contract, Re, '99, 1 Drake r. Mitchell, 3 East, 251 Drake v. Munday, Cro. Car. 207 Drant v. Brown, 3 B. & C. 665 Drant v. Vause, 1 Y. & C. C. C. 580 Draper v. Crofts, 15 M. & W. 166; 15 L Draper v. Thompson, 4 C. & P. 84 Dressler, Ex parte, 9 C. D. 252; 48 L	lr. R. 11	3	•••	414
Drake v. Munday Cro Car 207		•••		150 159
Drant v. Brown, 3 B. & C. 665				122
Drant v. Vause, 1 Y. & C. C. C. 580	··· _ ·		•••	164
Draper v. Crofts, 15 M. & W. 166; 15 L	. J. Ex.	92	•••	564
Drager v. Indupedi, 4 C. & F. 84 Dressler, Ex. parts. 9 C. D. 252 : 48 L.	. J. Bk.	20 : 89 T	т. 377	282 : 27
W. R. 144 Drew v. Guy, '94, 3 Ch. 25; 63 L. J. Ch				455
Drew v. Guy, '94, 3 Ch. 25; 63 L. J. Ch	. 547; 7	1 L. T. 2	20	
Drew v. Nunn, 4 Q. B. D. 631 Driscoll v. Battersea Borough Council, '0	9 1 K I	 R 881 · 7	9 T. I. R	224
564: 88 L. T. 795: 67 J. P. 264:	19 T. L	. R. 403	: 1 L. G	. R.
Driver, Re, 43 Sol. Journ. 705 Drohan v. Drohan, 1 Ball & B. 185 Druce v. Denison, 6 Ves. 385 Drummond and Davie's Contract, Re, 18			••	81, 390
Driver, Re, 43 Sol. Journ. 705			•••	321
Druce v. Denison, 6 Ves. 385	•••		•••	20
Drummond and Davie's Contract, Re, 18	91, 1 Ch.	524	•••	16
Didminiona v. Bant, L. Is. v Q. D. 100	9 j 41 LL.	J. W. D.	21, 20 1	. I.
419; 20 W. R. 18 Drury v. Macnamara, 5 E. & B. 612; 25		'R 5. 1	Jur N	578
1168	v. v.			398
Drury v. Molins, 6 Ves. 328			•••	371
Dublin (Corporation of) v. Judge, 11 Ir.	L. K. 8 . T- 191	•• •••	•••	574
Duck v. Braddyll. 18 Price. 455: M'Clel	. 217		•••	178
Drury v. Molins, 6 Ves. 328 Dublin (Corporation of) v. Judge, 11 Ir. Dublin and Wicklow Ry. Co. v. Black, 8 Duck v. Braddyll, 13 Price, 455; M'Clel Dudley's Contract, Re Countess of, 35 (Ch. D. 33	8; 56 L	J. Ch. 4	78;
57 L. T. 10; 35 W. R. 492 Dudley v. Folliott, 3 T. R. 584 Dudley v. Warde, Ambl. 113 Dugdale v. Robertson, 3 K. & J. 695; 3		•••	•••	5
Dudley v. Folhott, 8 T. R. 584 Dudley v. Warde, Ambl. 113	•••		•••	399 518
Dugdale v. Robertson, 3 K. & J. 695; 3	Jur. N. 8	8. 687		
Duke v. Ashby, 7 H. & N. 600; 31 L. J	. Ex. 108	s; 8 Jur.	N. S. 2	236 ;
10 11. 21.0				, , ,
155 : 9 L. T. 775 : 12 W. R. 205				530, 531
Dumpor's Case, 4 Rep. 119 b			426,	449, 503
Duncan v. Meikleham, 3 C. & P. 172		 vno	•••	281
Dunk v. Hunter. 5 B. & A. 322	оцги. р.		79.	219. 248
Dunn v. Bryan, Ir. R. 7 Eq. 143			•••	349, 378
Dumergue v. Rumsey, 2 H. & C. 777; 3 155; 9 L. T. 775; 12 W. R. 205 Dumpor's Case, 4 Rep. 119 b Duncan v. Meikleham, 3 C. & P. 172 Duncombe v. Hicks, referred to 42 Sol. J Dunk v. Hunter, 5 B. & A. 322 Dunn v. Bryan, Ir. R. 7 Eq. 143 Dunn v. Di Nuovo, 3 M. & Gr. 105; 10 Duppa v. Mayo, 1 Wms. Saund. 275 d Durham, &c., Ry. Co. v. Walker, 2 Q. B Duxbury v. Sandiford. 78 L. T. 230; 80 Dyas v. Cruise, 2 Jo. & Lat. 460 Dyar v. Bowley, 2 Bing, 94	L. J. C.	P. 3 18	•••	238
Duppa v. mayo, 1 wms. Saund, 2/5 d Durham &c Ry Co v Walker 2 O R	940 : 11	 i L. J. Ks	. 442	149
Duxbury v. Sandiford, 78 L. T. 230; 80.	Ibid. 552			78, 130
Dyas v. Cruise, 2 Jo. & Lat. 460			•••	53, 54, 55
Dyke, Ex parte, 22 Ch. D. 410; 52 L. W. R. 278				, 31 , 457, 499
Dyke v. Taylor, 3 D. F. & J. 467; 30 L.	J. Ch. 28	81	•••	421
Dymock v. Showell's Brewery Co., 79 L.			•••	414
Dyne v. Nutley, 14 C. B. 122 Dynevor, &c., Collieries Co., Re, 11 Ch.			•••	132, 1 33 36, 78
Dynevor v. Tennant, 13 App. Cas. 279;	57 L. J.	Ch. 1078		. 5 ;
37 W. R. 193			•••	142, 493
			c 2	3

						P	AGE
Endie v. Addison, 52 L. J. Ch. 80;	47 L.	Γ. 548	; 31 W	7. R. 32	20 T 05	104,	157
Eadon v. Jeffcock, L. R. 7 Ex. 379 20 W. R. 1038		••		•••	. 1. <i>61</i> ,		208
Eagleton v. Gutteridge, 11 M. & W.	465;	12 L.	J. Ex.	859	175,	•	
Eardley v. Granville, 3 Ch. D. 826. Earle and Webster's Contract, Re, 2 Earle v. Maugham, 14 C. B. N. S. 6 East v. Harding, Cro. Eliz. 498	 4 Ch 1	 D 144	•••	•••	•••	•••	145 47
Earle v. Maugham. 14 C. B. N. S.	26	 D. 144	•••	•••	•••	•••	383
East v. Harding, Cro. Eliz. 498 East v. Ryal, 2 P. W. 284	••	•••	•••	•••	•••	•••	66
East v. Ryal, 2 P. W. 284					···	•••	38
East and West India Dock Co., Ex 789; 45 L. T. 6; 30 W. R. 22.	parte,	17 Ch.	D. 15	9;50		in.	458
	••				•••	•••	66
Easterby v. Sampson, 6 Bing, 644.	••	•••					153
Eastern Telegraph Co., Lim. v. Der	ıt, '99,	, 1 Q.	B. 885	; 68 L	J. Q.	B.	, ,,
564; 78 L. T. 713; 80 Ibid. 45 Easton v. Penny, 67 L. T. 290; 41 Easton v. Pratt, 2 H. & C. 676; 33 Easton Estate Co. v. Western Wagge	V R	 79	•••		 5 50	424, 478	110
Easton v. Pratt, 2 H. & C. 676; 33	L. J.	Ex. 23	3 3			=, o,	52
Easton Estate Co. v. Western Wagge	n Co.,	54 L.	T. 785	i	•••	•••	266
EMILOU V. LIYON, 3 YES. OFO	••	•••	•••	•••	•••	•••	101
Eaton v. Southby, Willes, 181 Ebbetts v. Conquest, '95, 2 Ch. 377	 • 44 W	 7 R 56		 M) 89 T	 . T 54	262,	208
16 T. & R. 249	••	•••	•••		•••	346.	347
Eccles v. Mills, '98, A. C. 360; 67 I	. J. P	. C. 2	5; 78	L. T.			
W. R. 398	, T	 D 41	 2 100			447,	449
Ecclesiastical Commissioners v. Mer 93; 20 L. T. 573; 17 W. R. 67		V. 4 1	5X. 102	i; 60 1		2, 95	. 97
Ecclesiastical Commissioners v. O'Co	onuor,	9 Ir. (C. L. R	. 242	•••	•••	239
Ecclesiastical Commissioners v. Row	e, 5 A	pp. Ca	ıs. 736	; 49 L	. J. Q.	В.	
771; 43 L. T. 353; 29 W. R. Ecclesiastical Commissioners v. Tree	159	 08 1 (188		_T (٠ الا	578
119; 68 L. T. 11; 41 W. R. 16	111c1, 6		100			494,	578
Factoriactical Commissioners a Wad	ah amaa	7 20K	101	552 ; 64	L. J. 0	b.	
329; 72 L. T. 257; 43 W. R. Eccleston v. Clipsham, 1 Wms. Sau Edgar v. Blick, 1 Stark, 464	895		•••	•••	•••	•••	27
Edgar v. Blick, 1 Stark. 464	nd. 15	ช	•••	•••	•••	•••	160 122
Edge v. Boileau, 16 Q. B. D. 117; 5					907 ;	34	122
W. R. 103	••	···		•••	•••	159,	404
W. R. 103 Edge c. Pemberton, 12 M. & W. 18 Edge v. Strafford, 1 Cr. & J. 391	7;18	L. J. I	Cx. 48		104	100	348
Edgeon v. Cardwell, L. R. 8 C. P. 6	 47 : 23	 ፒ. ፕ.	819			182,	313
Edmonds, Exparte, 48 L. T. 77							456
Edmonds v. Eastwood, 2 H. & N. 8	11; 27	L. J.	Ex. 20				204
Edmondson v. Nuttall, 17 C. B. N.	S. 280	··;	 D 079	•••	•••	•••	313
Edmunds r. Wallingford, 14 O. B.	D. 81	. J. Q. 11:54	L. J.	о. в.	305 :	52	581
Edmunds r. Pinniger, 7 Q. B. 558; Edmunds τ. Wallingford, 14 Q. B. L. T. 720; 33 W. R. 647							246
Edwardes v. Barrington, 85 L. T.	650;	50 W.	R. 35	8; 18	T. L.	R.	400
169 Chudleigh,	 14 T]	 r. 18 4	 17	•••		86, 	422 108
Edwards, Re. 10 C. D. 605				•••	•••	•••	13
Edwards v. Carter, 1898, A. C. 860	; 63 L	. J. Ch	. 100 ;	69 L.	Т. 153		7, 9
Edwards v. Dick, 4 B. & A. 217 .					 N a o	•••	26
Edwards v. Hodges, 15 C. B. 477; 8 W. R. 167					N. 3. 9	ı ;	582
Edwards v. Kelly, 6 M. & S. 204 .	••		•••		•••		245
Edwards v. Millbank, 4 Drew. 606;	29 L.	J. Ch.	45	•••	•••	•••	53
Edwards r. Kees, 7 C. & P. 340 .	••	•••	•••	 o T T	401 .		205
Edwards v. West, 7 Ch. D. 858; 47 W. R. 507		•••			•••		166
Edwards v. Wickwar, 1 Eq. 403; 35	L. J.	Ch. 30	9;14	W.R.	363	•••	444
Edwick v. Hawkes, 18 Ch. D. 199;	50 L.	J. Ch.	577;	45 L. T	. 168 ;		
W. R. 913	 58 · 1	 0 Jur '	 N. S. K	 17 · Q T	. 170, ∵T 99	505, 1	5/0
Eldridge v. Stacey, 15 C. B. N. S. 4 12 W. R. 51		•••	•••		•••	284,	294

Elgar v. Watson, Car. & M. 494							AGE 96
Elias r. Griffith, 8 C. D. 521; 48	L J.	Ch. 2	208 : 38	3 L. T.	. 871:	26	•
W. R. 869	•••	•••	•••		•••	•••	211
Elias v. Snowdon Slate Quarries Co	., 4 Ap	p. Cas.	454;	48 L. J	. Ch. 81	11;	
41 L. T. 289; 28 W. R. 54				•••	•••	•••	211
Eliot v. Mayor of Bristol, 71 L. T.	659		•••	•••	•••	•••	76
Elliott, Ex parte, 3 M. & A. 664 Elliott v. Ince, 7 D. M. & G. 475	•••	•••	•••	•••	•••	•••	324
Elliott v. Ince, 7 D. M. & G. 475	•••	··· _	···		•••	•••	14
Elliott v. Johnson, L. R. 2 Q. B. 1	20;80	L. J.	Q. B. 4		W. R. 3	253	438
Ellis v. Peachy, 18 L. J. Q. B. 137	•••	•••	•••	•••	•••	•••	577
Ellis v. Taylor, 8 M. & W. 415 Ellis v. Rowbotham, 80 L. T. 328	T	 T D	901		** '00		298
D 740. so T T O D 27	; 10 T	. Ц. К.	3V1; 8	ina. C.	A. U), I	
Q. B. 740; 69 L. J. Q. B. 378 T. L. R. 258							241
Ellis n Wright 76 L. T 500	•••		•••	•••	•••	•••	246
Ellis v. Wright, 76 L. T. 522 Elmore v. Pirie, 57 L. T. 333	•••	•••	•••	•••	•••	•••	122
Elphinstone (Lord) v. Monkland I	ron and	Coal (Co 11	App.		32 :	
							425
Elston v. Rose, 3 B. & S. 509; L.	R. 4 Q.	B. 4:	38 L.	J. Q.	B. 6;	19	
L. T. 280 : 17 W. B. 52							578
Elwes v. Brigg Gas Co., 83 Ch. D.	562; 5	5 L. J.	Ch. 73	4; 55]	L. T. 8	31;	
35 W. R. 192 Elwes v. Maw, 3 East, 88	•••	•••	•••	•••	•••	•••	144
Elwes v. Mew. 3 East. 38	•••	· <u>··</u> · _	5	18, 519	9, 522,	525,	526
Elworthy v. Sandford, 3 H. & C. 3	30; 34	L. J.	Ex. 42	; 10 1	л. Т. 6	54;	
12 W. R. 1008					···		187
Emanuel and Simmonds, Re, 33 C	h. D. 4	U; 55 .	L. J. C	h. 710	; 55 L.		100
79; 34 W. R. 618 Emery and Barnett, Re, 4 C. B. N		9 . 07	T"1 C	10 01	 e	•••	189 288
Frances a Uselia o Tourt 99	. 5. 42	0, 21	L. J. C	. F. ZI		•••	110
Enumerson v. Heelis, 2 Taunt. 38 Emott v. Cole, Cro. Eliz. 255	•••	•••	•••	•••	•••	•••	240
Empson v. Soden, 4 B. & Ad. 655		•••	•••	•••	•••	•••	519
							164
Emuss v. Smith, 2 De G. & Sm. 72 Engel v. South Metrop. Brewing C England v. Cowley, L. R. 8 Ex. 12	lo., 189	1. W.	N. p. 3	1	•••	•••	262
England v. Cowley, L. R. 8 Ex. 19	26; 42	L. J. 1	£x. 80 ;	28 L.	T. 67;	21	
W. R. 837		•••		•••	•••	274,	277
England v. Marsden, L. R. 1 C. P.	529	•••	•••	•••	•••	•••	246
England v. Shearburn, 52 L. T. 22	· · · ·	•••	•••	•••	•••	•••	535
Knøland & Slade 4 T. R. 682		•••					77
English v. Tynemouth Corporation			•••-		-:	•••	
	, 67 J.	P. 239	; 1 L.	G. R.	177	•••	143
Envs v. Donnithorne, 2 Burr, 1190)	•••			•••	 146,	143 160
Enys v. Donnithorne, 2 Burr. 1190 Erne (Earl of) v. Armstrong, Ir. R.	6 C. L	 . 279 ;			•••	 146, 	143 160 476
Enys v. Donnithorne, 2 Burr. 1190 Erne (Earl of) v. Armstrong, Ir. R. Errington v. Metrop. Rv. Co 19 () 6 C. L Ch. D. &	 279 ; 559	20 W.	R. 370)	 146, 	143 160 476 199
Enys v. Donnithorne, 2 Burr. 1190 Erne (Earl of) v. Armstrong, Ir. R. Errington v. Metrop. Rv. Co 19 () 6 C. L Ch. D. &	 279 ; 559	20 W.	R. 370)	 146, 	143 160 476 199
Enys v. Donnithorne, 2 Burr. 1190 Erne (Earl of) v. Armstroug, Ir. R. Erriugton v. Metrop. Ry. Co., 19 (Erskine v. Adeane, 8 Ch. 756; 47 W. R. 802) 6 C. L Ch. D. & L. J.	 559 Ch. 8	20 W. 49; 29 106, 1	H. 370 L. T. 29, 130) 284;), 356,	146, 21 376,	143 160 476 199 411
Enys v. Donnithorne, 2 Burr. 1190 Erne (Earl of) v. Armstrong, Ir. R. Erriugton v. Metrop. Ry. Co., 19 (Erskine v. Adeane, 8 Ch. 756; 47 W. R. 802 Erskine v. Armstrong, 20 L. R. Ir Esnir v. Todd C. & E. 154	6 C. L Ch. D. & L. J.	279 ; 559 Ch. 8	20 W. 49; 29 106, 1	R. 370 L. T. 29, 130	284; 0, 356,	146, 21 376,	143 160 476 199 411 110
Enys v. Donnithorne, 2 Burr. 1190 Erne (Earl of) v. Armstrong, Ir. R. Erriugton v. Metrop. Ry. Co., 19 (Erskine v. Adeane, 8 Ch. 756; 47 W. R. 802 Erskine v. Armstrong, 20 L. R. Ir Esnir v. Todd C. & E. 154	6 C. L Ch. D. & L. J.	279 ; 559 Ch. 8	20 W. 49; 29 106, 1	R. 370 L. T. 29, 130	284; 0, 356,	146, 21 376,	143 160 476 199 411
Enys v. Donnithorne, 2 Burr. 1190 Erne (Earl of) v. Armstrong, Ir. R. Errington v. Metrop. Ry. Co., 19 (Erskine v. Adeane, 8 Ch. 756; 47 W. R. 802 Erskine v. Arnstrong, 20 L. R. Ir Espir v. Todd, C. & E. 154 Kspley v. Wilkes, L. R. 7 Ex. 298	6 C. L Ch. D. & L. J. . 296	 5.279; 559 Ch. 8 J. Ex	20 W. 49; 29 106, 1	R. 376 L. T. 29, 136	284; 0, 356,	146, 21 376, 	143 160 476 199 411 110 89
Enys v. Donnithorne, 2 Burr. 1190 Erne (Earl of) v. Armstrong, Ir. R. Errington v. Metrop. Ry. Co., 19 (Erskine v. Adeane, 8 Ch. 756; 47 W. R. 802 Erskine v. Armstrong, 20 L. R. Ir Espir v. Todd, C. & E. 154 Espley v. Wilkes, L. R. 7 Ex. 298 Esron v. Nicholas, 1 De G. & Sm. Essex v. Daniel. L. R. 10 C. P. 53:	6 C. L Ch. D. & L. J. 296 ; 41 L.	 3. 279 ; 559 Ch. 8 J. Ex	20 W. 49; 29 106, 1	L. T. 229, 130	284; 0, 356, 	146, 21 376, 	143 160 476 199 411 110 89 140
Enys v. Donnithorne, 2 Burr. 1190 Erne (Earl of) v. Armstrong, Ir. R. Errington v. Metrop. Ry. Co., 19 (Erskine v. Adeane, 8 Ch. 756; 47 W. R. 802 Erskine v. Armstrong, 20 L. R. Ir Espir v. Todd, C. & E. 154 Espley v. Wilkes, L. R. 7 Ex. 298 Esron v. Nicholas, 1 De G. & Sm. Essex v. Daniel. L. R. 10 C. P. 53:	6 C. L Ch. D. & L. J. 296 ; 41 L.	 3. 279 ; 559 Ch. 8 J. Ex	20 W. 49; 29 106, 1	8. 376 L. T. 29, 136	284; 0, 356, 1. 918	146, 21 376, 	143 160 476 199 411 110 89 140 6 182
Enys v. Donnithorne, 2 Burr. 1190 Erne (Earl of) v. Armstrong, Ir. R. Erriugton v. Metrop. Ry. Co., 19 (Erskine v. Adeane, 8 Ch. 756; 47 W. R. 802 Erskine v. Armstrong, 20 L. R. Ir Espir v. Todd, C. & E. 154 Kspley v. Wilkes, L. R. 7 Ex. 298 Esron v. Nicholas, 1 De G. & Sm. Essex v. Daniel, L. R. 10 C. P. 53: Etherton v. Popplewell, 1 East, 18 Evans, Re, 2 My. & K. 318	6 C. L Ch. D. & L. J. 296 ; 41 L. 118 8	279; 559 Ch. 8 	20 W. 349; 29 106, 1 241;	26 L. T.	284; 0, 356, 1. 918	146, 21 376, 291,	143 160 476 199 411 110 89 140 6 182 297 5
Enys v. Donnithorne, 2 Burr. 1190 Erne (Earl of) v. Armstrong, Ir. R. Erriugton v. Metrop. Ry. Co., 19 (Erskine v. Adeane, 8 Ch. 756; 47 W. R. 802 Erskine v. Arnstrong, 20 L. R. Ir Espir v. Todd, C. & E. 154 Kspley v. Wilkes, L. R. 7 Ex. 298 Esron v. Nicholas, 1 De G. & Sm. Essex v. Daniel, L. R. 10 C. P. 53: Etherton v. Popplewell, 1 East, 18 Evans, Re, 2 My. & K. 318 Evans v. Angell, 26 Beav. 202	6 C. L Ch. D. & L. J. 296 ; 41 L. 118 8	279; 559 Ch. 8 	20 W. 349; 29 106, 1 241;	26 L. 7	284; 0, 356, 1. 918	146, 21 376, 291,	143 160 476 199 411 110 89 140 6 182 297 5 138
Enys v. Donnithorne, 2 Burr. 1190 Erne (Earl of) v. Armstrong, Ir. R. Erriugton v. Metrop. Ry. Co., 19 (Erskine v. Adeane, 8 Ch. 756; 47 W. R. 802 Erskine v. Armstrong, 20 L. R. Ir Espir v. Todd, C. & E. 154 Kspley v. Wilkes, L. R. 7 Ex. 298 Esron v. Nicholas, 1 De G. & Sm. Essex v. Daniel, L. R. 10 C. P. 53: Etherton v. Popplewell, 1 East, 18 Evans v. Angell, 26 Beav. 202	6 C. L Ch. D. & L. J. 296 ; 41 L. 118 3 9	279; 559 Ch. 8 	20 W. 349; 29 106, 1	E. 370 E. T. 29, 130 26 L. 7	284; 0, 356, 1. 918	146, 21 376, 291, 	143 160 476 199 411 110 89 140 6 182 297 5
Enys v. Donnithorne, 2 Burr. 1190 Erne (Earl of) v. Armstrong, Ir. R. Erriugton v. Metrop. Ry. Co., 19 (Erskine v. Adeane, 8 Ch. 756; 47 W. R. 802 Erskine v. Armstrong, 20 L. R. Ir Espir v. Todd, C. & E. 154 Kspley v. Wilkes, L. R. 7 Ex. 298 Esron v. Nicholas, 1 De G. & Sm. Essex v. Daniel, L. R. 10 C. P. 53: Etherton v. Popplewell, 1 East, 18 Evans v. Angell, 26 Beav. 202	6 C. L Ch. D. & L. J. 296 ; 41 L. 118 3 9	279; 559 Ch. 8 	20 W. 349; 29 106, 1	E. 370 E. T. 29, 130 26 L. 7	284; 0, 356, 1. 918	146, 21 376, 291, 	143 160 476 199 411 110 89 140 6 182 297 5
Enys v. Donnithorne, 2 Burr. 1190 Erne (Earl of) v. Armstrong, Ir. R. Erriugton v. Metrop. Ry. Co., 19 (Erskine v. Adeane, 8 Ch. 756; 47 W. R. 802 Erskine v. Armstrong, 20 L. R. Ir Espir v. Todd, C. & E. 154 Kspley v. Wilkes, L. R. 7 Ex. 298 Esron v. Nicholas, 1 De G. & Sm. Essex v. Daniel, L. R. 10 C. P. 53: Etherton v. Popplewell, 1 East, 18 Evans v. Angell, 26 Beav. 202 Evans v. Curtis, 2 C. & P. 296 Evans v. Davis, 10 Ch. D. 747; 4 W. R. 285	6 C. L Ch. D. & L. J. ; 41 L. 118 3 9 8 L. J.	279; 559 Ch. 8 	20 W. 49; 29 106, 1 241;	R. 370 L. T. 29, 130 26 L. 7	 234; 0, 356, 1. 918 	 146, 21 376, 291, 27 358,	143 160 476 199 411 110 89 140 6 182 297 5 133 110
Enys v. Donnithorne, 2 Burr. 1190 Erne (Earl of) v. Armstrong, Ir. R. Erriugton v. Metrop. Ry. Co., 19 (Erskine v. Adeane, 8 Ch. 756; 47 W. R. 802 Erskine v. Arnstrong, 20 L. R. Ir Espir v. Todd, C. & E. 154 Kspley v. Wilkes, L. R. 7 Ex. 298 Esron v. Nicholas, 1 De G. & Sm. Essex v. Daniel, L. R. 10 C. P. 53: Etherton v. Popplewell, 1 East, 18 Evans v. Angell, 26 Beav. 202 Evans v. Curtis, 2 C. & P. 296 Evans v. Davis, 10 Ch. D. 747; 4 W. R. 285 Evans v. Elliott, 5 A. & E. 142	6 C. L Ch. D. U L. J . 296 ; 41 L. i18 3 9 8 L. J.	279; 559 Ch. 8	20 W. 49; 29 106, 1 241;	26 L. T	234; 0, 356, 1. 918 	 146, 21 876, 291, 27 358, 298,	143 160 476 199 411 110 89 140 6 182 297 5 133 110 501 808
Enys v. Donnithorne, 2 Burr. 1190 Erne (Earl of) v. Armstrong, Ir. R. Erriugton v. Metrop. Ry. Co., 19 (Erskine v. Adeane, 8 Ch. 756; 47 W. R. 802 Erskine v. Arnstrong, 20 L. R. Ir Espir v. Todd, C. & E. 154 Repley v. Wilkes, L. R. 7 Ex. 298 Esron v. Nicholas, 1 De G. & Sm. Essex v. Daniel, L. R. 10 C. P. 53: Etherton v. Popplewell, 1 East, 18 Evans, Re, 2 My. & K. 318 Evans v. Angell, 26 Beav. 202 Evans v. Curtis, 2 C. & P. 296 Evans v. Davis, 10 Ch. D. 747; 4 W. R. 285 Evans v. Elliott, 5 A. & E. 142 Evans v. Elliott, 5 A. & E. 142	6 C. L. Ch. D. & L. J	279; 559 Ch. 8 	20 W. 49; 29 106, 1 241;	R. 370 L. T. 29, 130 26 L. 7	 284; 0, 356, 1. 918 	 146, 21 376, 291, 27 358, 298, 68,	143 160 476 199 411 110 89 140 6 182 297 5 138 110 501 808 252
Enys v. Donnithorne, 2 Burr. 1190 Erne (Earl of) v. Armstrong, Ir. R. Erriugton v. Metrop. Ry. Co., 19 (Erskine v. Adeane, 8 Ch. 756; 47 W. R. 802 Erskine v. Arnstrong, 20 L. R. Ir Espir v. Todd, C. & E. 154 Espir v. Todd, C. & E. 154 Esper v. Wilkes, L. R. 7 Ex. 298 Esron v. Nicholas, 1 De G. & Sm. Essex v. Daniel, L. R. 10 C. P. 53 Etherton v. Popplewell, 1 East, 13 Evans, Re, 2 My. & K. 318 Evans v. Angell, 26 Beav. 202 Evans v. Curtis, 2 C. & P. 296 Evans v. Davis, 10 Ch. D. 747; 4 W. R. 285 Evans v. Elliott, 5 A. & E. 142 Evans v. Elliott, 9 A. & E. 342 Evans v. Jackson. 8 Sim. 207	6 C. L Ch. D. & L. J. . 296 . 41 L. 118 8 9 8 L. J.	279; 559 Ch. 8 J. Ex	20 W 249; 29 106, 1	R. 370 L. T. 129, 130 26 L. 3 	284; 0, 356, 	 146, 21 376, 291, 27 358, 298, 68,	143 160 476 199 411 110 89 140 6 182 297 5 133 110 501 808
Enys v. Donnithorne, 2 Burr. 1190 Erne (Earl of) v. Armstrong, Ir. R. Erriugton v. Metrop. Ry. Co., 19 (Erskine v. Adeane, 8 Ch. 756; 47 W. R. 802 Erskine v. Armstrong, 20 L. R. Ir Espir v. Todd, C. & E. 154 Esper v. Wilkes, L. R. 7 Ex. 298 Esron v. Nicholas, 1 De G. & Sm. Essex v. Daniel, L. R. 10 C. P. 53: Etherton v. Popplewell, 1 East, 13 Evans, Re, 2 My. & K. 318 Evans v. Angell, 26 Beav. 202 Evans v. Curtis, 2 C. & P. 296 Evans v. Davis, 10 Ch. D. 747; 4 W. R. 285 Evans v. Elliott, 5 A. & E. 142 Evans v. Elliott, 9 A. & E. 342 Evans v. Jaekson, 8 Sim. 207 Evans v. Matthias, 7 E. & B. 590;	6 C. L Ch. D. & L. J. . 296 . 41 L. 118 8 9 8 L. J.	279; 559 Ch. 8 J. Ex	20 W 249; 29 106, 1	R. 370 L. T. 129, 130 26 L. 3 	284; 0, 356, 17. 918 	 146, 21 376, 291, 291, 27 358, 298, 68, 8.	143 160 476 199 411 110 89 140 6 182 297 5 133 110 501 808 252 58
Enys v. Donnithorne, 2 Burr. 1190 Erne (Earl of) v. Armstrong, Ir. R. Erriugton v. Metrop. Ry. Co., 19 (Erskine v. Adeane, 8 Ch. 756; 47 W. R. 802 Erskine v. Arnstrong, 20 L. R. Ir Espir v. Todd, C. & E. 154 Kspley v. Wilkes, L. R. 7 Ex. 298 Esron v. Nicholas, 1 De G. & Sm. Essex v. Daniel, L. R. 10 C. P. 53: Etherton v. Popplewell, 1 East, 18 Evans v. Daniel, 26 Beav. 202 Evans v. Curtis, 2 C. & P. 296 Evans v. Curtis, 2 C. & P. 296 Evans v. Curtis, 2 C. & P. 296 Evans v. Elliott, 5 A. & E. 142 Evans v. Elliott, 9 A. & E. 342 Evans v. Jackson, 8 Sim. 207 Evans v. Matthias, 7 E. & B. 590; 793	6 C. L Ch. D. L L. J. 8 L. J. 8 L. J. 	279; 559 Ch. 8 J. Ex	20 W 2149; 29 106, 1 241;	R. 370 L. T. 29, 130 26 L. 7 9 L. T	234; 0, 356, 918 	 146, 21 376, 291, 27 358, 298, 68,	143 160 476 199 411 110 89 140 6 182 297 5 133 110 501 808 252 58
Enys v. Donnithorne, 2 Burr. 1190 Erne (Earl of) v. Armstrong, Ir. R. Erriugton v. Metrop. Ry. Co., 19 (Erskine v. Adeane, 8 Ch. 756; 47 W. R. 802 Erskine v. Armstrong, 20 L. R. Ir Espir v. Todd, C. & E. 154 Espir v. Todd, C. & E. 154 Esper v. Wilkes, L. R. 7 Ex. 298 Esron v. Nicholas, 1 De G. & Sm. Essex v. Daniel, L. R. 10 C. P. 53 Etherton v. Popplewell, 1 East, 13 Evans, Re, 2 My. & K. 318 Evans v. Angell, 26 Beav. 202 Evans v. Curtis, 2 C. & P. 296 Evans v. Curtis, 2 C. & P. 296 Evans v. Elliott, 5 A. & E. 142 Evans v. Elliott, 5 A. & E. 342 Evans v. Matthias, 7 E. & B. 590; 793 Evans v. Roberts, 5 B. & C. 829; Rvans v. Roberts, 5 B. & C. 261 Rvans v. Vanphan, 4 B. & C. 261	6 C. L Ch. D. L L. J. ; 41 L 118 8 9 26 L. 4 L. J.		20 W 2149; 29 106, 1 241;	R. 370 L. T. 29, 130 26 L. 7 9 L. T	 	 146, 21 376, 291, 27 358, 298, 68, 8. 72,	143 160 476 199 411 110 89 140 6 182 297 5 138 110 501 808 252 58 258 582
Enys v. Donnithorne, 2 Burr. 1190 Erne (Earl of) v. Armstrong, Ir. R. Erriugton v. Metrop. Ry. Co., 19 (Erskine v. Adeane, 8 Ch. 756; 47 W. R. 802 Erskine v. Arnstrong, 20 L. R. Ir Espir v. Todd, C. & E. 154 Kspley v. Wilkes, L. R. 7 Ex. 298 Esron v. Nicholas, 1 De G. & Sm. Essex v. Daniel, L. R. 10 C. P. 53: Etherton v. Popplewell, 1 East, 18 Evans v. Daniel, 26 Beav. 202 Evans v. Curtis, 2 C. & P. 296 Evans v. Curtis, 2 C. & P. 296 Evans v. Curtis, 2 C. & P. 296 Evans v. Elliott, 5 A. & E. 142 Evans v. Elliott, 9 A. & E. 342 Evans v. Jackson, 8 Sim. 207 Evans v. Matthias, 7 E. & B. 590; 793	6 C. L Ch. D. L L. J. 296 ; 41 L. 118 3 9 8 L. J. 26 L. 		20 W	R. 370 L. T. 29, 130 26 L. 7 9 L. T	 	 146, 21 376, 291, 27 358, 298, 68, 8. 72, 105,	143 160 476 199 411 110 89 140 6 182 297 5 133 110 501 808 252 58 253 582 405

•						P	AGE
Evans v. Wyatt, 48 L. T. 176; 44. Evelyn v. Chichester, 3 Burr. 1717 Evelyn v. Raddish, 7 Taunt. 411 Everett v. Wilkins, 29 L. T. 846	J. P. 7	67	•••	•••			502
Evelyn v. Chichester, 3 Burr. 1717	•••	•••	•••	•••	•••	•••	10
Evelyn v. Raddish, 7 Taunt. 411	•••		•••	•••	•••		341
Everett v. Wilkins, 29 L. T. 846	•••	•••		•••		•••	10
Ewart v. Fryer, '01, 1 Ch. 499: 70	I., J.	Ch.	138: 8	2 L. 7	Γ. 415	: 83	
L. T. 551: 49 W. R. 145: 64	J. P.	534:	17 T.	L. R.	145:	also	
(1902) 86 L. T. 676 : 18 T. L.	R. 590)		•••	173	506.	509
Ewart v. Graham. 7 H. L. C. 331	•••	•••	•••	•••		•••	411
Ewer v. Movle, Cro. Eliz. 771	•••	•••	•••	•••	•••	•••	238
Evelyn v. Raddish, 7 Taunt. 411 Everett v. Wilkins, 29 L. T. 846 Ewart v. Fryer, '01, 1 Ch. 499; 70 L. T. 551; 49 W. R. 145; 64 (1902) 86 L. T. 676; 18 T. L. Ewart v. Graham, 7 H. L. C. 331 Ewer v. Moyle, Cro. Eliz. 771 Exall v. Partridge, 8 T. R. 308 Exhall Coal Mining Co., Re, 4 D. J. L. T. 526; 13 W. R. 219 Eyre v. Shaftesbury, 2 P. W. 102	•••	•••					246
Exhall Coal Mining Co., Re. 4 D. J	J. & S.	. 377 :	33 L	. J. Cl	ı. 595	: 11	
L. T. 526 : 13 W. R. 219	•••		•••	•••	•••		326
L. T. 526; 13 W. R. 219 Eyre v. Shaftesbury, 2 P. W. 102 Eyton v. Jones, 21 L. T. 789	•••	•••	•••	•••	•••	•••	8
Eyton v. Jones, 21 L. T. 789	•••	•••	•••	•••		•••	426
Fabian v. Winston, Cro. Eliz. 209 Fagg v. Dobie, 3 Y. & C. Ex. 96 Fairlamb v. Beaumont, 81 Sol. Jou	•••	•••	•••	•••	•••	•••	497
Fagg v. Dobie, 3 Y. & C. Ex. 96	•••	•••	•••	•••	•••	•••	441
Fairlamb v. Beaumont, 31 Sol. Jou	rn. p.	272	•••	•••	•••	•••	279
Faircloth, Re, 13 Ch. D. 307 Fairtlough v. Whitmore, 64 L. J.	•••	•••	•••	•••	•••	•••	12
Fairtlough v. Whitmore, 64 L. J. (Ch. 38	6;72	L. T. 8	854; 48	3 W. R.	421	362
Falmouth (Earl of) v. Roberts, 9 M	l. & W	7. 469	•••	•••	•••	•••	185
Falmouth (Earl of) v. Roberts, 9 M Farewell v. Dickenson, 6 B. & C. 2	51	•••		•••	•••	•••	218
Farewell v. Dickenson, 6 B. & C. 2 Farlow v. Stevenson, '00, 1 Ch. 12	8;69	L. J.	Ch. 10	6; 81	L. T.	589;	
48 W. K. 213: 15 T. L. K. 24	9:16	Т. L.	K. 57			•••	392
Farmer v. Rogers, 2 Wils. 26	•••			•••	•••	. •••	486
Farmer v. Rogers, 2 Wils. 26 Farnell's Settled Estate, Re, 88 Ch	. D. 5	99 ; 35	W. R	. 250		•••	42
						J. T.	
152; 42 W. R. 306 Farrance v. Elkington, 2 Camp. 59 Farrant v. Lovel, 3 Atk. 723 Farrant v. Olmius, 3 B. & A. 692 Farrall v. Hilditch, 5 C. B. N. S.	•••	•••	•••	•••	•••	•••	547
Farrance v. Elkington, 2 Camp. 59)1	•••	•••	•••		474,	569
Farrant v. Lovel, 8 Atk. 723	•••	•••	•••	•••	•••	•••	353
Farrant v. Olmius, 3 B. & A. 692	•••	•••	•••	•••	•••	•••	227
Farrall v. Hilditch, 5 C. B. N. S. Farrall v. Davenport, 3 Giff. 863;	840	. :		1049	•••	•••	153
Farrail v. Davenport, 3 Giff. 863;	and.	Jur.	N. S.	1048	•••	•••	112
Farrer v. Nelson, 15 Q. B. D. 258	; 54 1	L. J. 4	, B. 3	50; 52			444
33 W. R. 800	***		,		•••	•••	411
Faulkner v. Lieweilin, y L. T. 251	, 557	12 1	7. K. I	93	•••	•••	231
Faulkner v. Lieweilli, 51 L. J. Ch	1. 049	E- 05	. R. 3	78	•••	•••	111
Faulkner v. Llewellin, 9 L. T. 251 Faulkner v. Llewellin, 91 L. J. Ch Faviell v. Gaskoin, 7 Ex. 273; 21 Fawcett and Holmes, Re, 42 Ch.	T. J.	EX. OU	TT	~ ,	0 . 41 1	or.	530
10E	D. 10	JU; JO	L. J.	CII. 70	9, 01 1	49 <i>8</i>	490
105 Fewart a Strickland Willes 57	•••	•••	•••	•••	•••	400,	84
Fawcett v. Strickland, Willes, 57 Fawkner v. Booth, 10 T. L. R. 83	•••	•••	•••		•••	•••	413
Fawkner v. Booth, 10 T. L. R. 83 Fell v. Whittaker, L. R. 7 Q. B. 12	 M · 41	т. т	O B	78 . 95	т. т	880 .	410
20 W R 917	.0, 11	ш, о.	w. D.	10, 20	278	287	988
20 W. R. 317 Female Orphan Asylum, Re, 17 L. Fenn v. Smart, 12 East, 444	ጥ ለዓ	· 15 V	V R 1	1056		, 20,	23
Fenn v. Smart. 12 East. 444		,					498
Fenn v. Smart, 12 East, 444 Fenner v. Blake, '00, 1 Q. B. 426;	69 L	. j. o	. B. 2	57:82	L. T.	149 :	
48 W. R. 392					487	. 488.	489
Fenner v. Duplock, 2 Bing, 10	•••		•••	•••	78	243.	244
Fenny v. Child. 2 M. & S. 255	•••			•••	e	5. 79.	130
Fenton v. Clegg. 9 Ex. 680: 23 L.	J. E:	r. 197		•••	•••		451
Fenton v. Logan, 9 Bing, 676	•••	•••	•••	•••	•••	•••	266
Feret v. Hill. 15 C. B. 207: 28 L.	J. C.	P. 185	: 18 J	ur. 101	4	•••	354
Ferguson v. Anon., 2 Esp. 590			,		•••	***	333
Ferguson v. Cornish, 2 Burr. 1032	: 3 T.	R. 463	3. n.	•••	•••		100
Ferraby v. Hobson, 2 Phil. 261	•••	•••	•••	•••	•••		38
Fenner v. Blake, '00, 1 Q. B. 426; 48 W. R. 392 Fenner v. Duplock, 2 Bing. 10 Fenny v. Child, 2 M. & S. 255 Fenton v. Clegg, 9 Ex. 680; 23 L. Fenton v. Logan, 9 Bing. 676 Feret v. Hill, 15 C. B. 207; 23 L. Ferguson v. Anon., 2 Esp. 590 Ferguson v. Cornish, 2 Burr. 1032 Ferraby v. Hobson, 2 Phil. 261 Festing v. Taylor, 2 B. & S. 217 Few v. Perkins, L. R. 2 Ex. 92	•••	•••	•••	•••	•••	•••	385
Few v. Perkins, L. R. 2 Ex. 92	; 36 I	. J. I	Cx. 54	; 16 L	T. 62	; 15	
W. R. 718							502
Field. Re. 29 Ch. D. 608: 54 L. J.	Ch. 6	61 : 52	L. T.	480 : 38	W. R.	553	189
Field v. Adames, 12 A. & E. 649	•••	•••	•••	•••	•••	•••	261
Field v. Mitchell, 6 Esp. 71	•••		•••			•••	288
Field v. Mitchell, 6 Esp. 71 Fielden v. Slater, 7 Eq. 523; 38	3 L. J	. Ch.	379;	20 L.	T. 112	; 17	
117 D 405						040	440

						P.	AGE
Fielden v. Tattersall, 7 L. T. 718		•••				997	
Filby v. Hounsel, '96, 2 Ch. 737;	65 T.	J. Ch. 8	352 : 75	5 L. T.	270 ·	45	
W. R. 232		· · · ·	, , ,		<u>-</u> , · · ,	104,	108
W. R. 232 Fildes v. Hooker, 2 Mer. 424	•••	· •••	***	•••			113
Pillian - Dimend 11 O D 047	. 14 T	· · ·	1) 00	•••			
Filliter v. Phippard, 11 Q. B. 347	; 1/ 1	. J. Q.	D. 98	•••	•••	•••	833
Financial Times v. Bell, 19 T. L. I	K. 433	•••	•••	•••	•••	•••	141
Finch's Case, 6 Rep. 63 a	•••	•••	•••	•••	•••	•••	60
Financial Times v. Bell, 19 T. L. I Finch's Case, 6 Rep. 63 a Finch v. Miller, 5 C. B. 428	•••	•••	•••	8	95, 98,	220,	299
Finch v. Underwood, 2 Ch. D. 31	0;45	L. J. C	h. 522	; 34 L	. l. //	v :	
24 W. B. 657						159,	168
Findon v. M'Laren, 6 Q. B. 891;	14 L. J	r. o. B.	188 : 9	Jur.	369		258
Finlay v. Bristol and Exeter Ry. C	h 7 l	(x 409	· 21 [.	J Ev	117	•••	22
1 may be Dissol and America 15.	,,, , <u>,</u>	JA. 100	,	. v	,	95	QR.
Finley D. Ol O D D 475 . 57	1 Т	Λ D	404 . 41	י די	194.	97	, ,,
Finley, Re, 21 Q. B. D. 475; 57 W. R. 6	La. J.	Q. D.	020; 00	<i>J</i> 11. 1.	, 104;	450	100
W. IL. D	•••	•••	•••	•••	•••	49¥,	400
Firth v. Purvis, 5 T. R. 432	•••	•••	•••	•••	•••	•••	295
Fish v. Campion, 2 Rol. Abr. 498	•••	•••	• • •	•••	•••	•••	490
Fisher v. Algar, 2 C. & P. 374	•••	• • •	•••	•••	288,	305,	306
Fisher v. Dixon, 12 Cl. & F. 312;	9 Jur.	883		•••	•••	516,	517
W. R. 6 Firth v. Purvis, 5 T. R. 432 Fish v. Campion, 2 Rol. Abr. 498 Fisher v. Algar, 2 C. & P. 374 Fisher v. Dixon, 12 Cl. & F. 312; Fisher v. Marsh, 6 B. & S. 411; 34	1 L. J.	Q. B. 1	177:11	Jur. N	I. S. 79	5:	
12 L. T. 604: 13 W. R. 834					•••		330
Richwick v Milney 4 Ex 825 10	T. J	Ev 15	9	•••			306
Fighmongers, Co & Robertson K	M P C	le 191		•••	•••	•••	99
12 L. T. 604; 13 W. R. 834 Fishwick v. Milnes, 4 Ex. 825; 16 Fishmongers' Co. v. Robertson, 5 l Fitz v. Iles, '93, 1 Ch. 77; 62 L. 4 Fitzgerald r. Lord Portarlington, Fitzherbert v. Shaw, 1 H. Bl. 258 Fitzmaurice v. Bayley, 8 E. & B. 143, 6 Jur. N. S. 1215, 8 J.	ו כה	OKO. RO	 T	109	•••	959	950
Fitz V. Mes, 90, 1 Cm. 77; 02 L. d	la OII.	200, U	401	100	•••	000,	100
Fitzgeraid r. Lord Portarington,	ones	ex. a.	401	•••	***		100
Fitzherbert v. Shaw, 1 H. Bl. 258	•••			•••	918,	526,	029
Fitzmaurice v. Bayley, 8 E. & B.	664;	9 H. L	C. 78	3;271	ո J. Q.	B.	
143; 6 Jur. N. S. 1215; 8 V	V. R. 7	'50	•••	•••	71	, 93,	108
143; 6 Jur. N. S. 1215; 8 V Fitzpatrick v. Waring, 11 L. R. Ir Fitzsimmons v. Lord Mostyn, '04 Ibid. 72; 88 L. T. 7; 89 Ibid	. 35	•••	•••	•••	•••	58,	198
Fitzsimmons v. Lord Mostvn. '04	. A. (3. 46 :	72 L. J	. K. B	. 164 :	73 [^]	
Ibid. 72 : 88 L. T. 7 : 89 Ibid	616 :	52 W.	R. 837	20 T.	L. R. 1	34	168
Flarty v. Odlum, 3 T. R. 681				,			3
Flarty v. Odlum, 3 T. R. 681 Fleetwood v. Hull, 23 Q. B. D. 85			R 241	. 80 [. T 70	0 •	•
97 W D 714	, 50 1	u. v. w.	D. ULI	, 00 2	981	495	AAR
37 W. R. 714 Fleming v. Gooding, 10 Bing. 549 Fleming v. Snook, 5 Beav. 250	•••	•••	•••	•••	00±,	400,	75
Fleming v. Gooding, 10 bing. 549	•••	•••	•••	•••	•••	•••	19
Fleming v. Snook, 5 Beav. 250	•••	. •••			•••		370
Fleming v. Snook, 5 Beav. 250 Fletcher and Dyson, Re, '03, 2 C 473; 52 W. R. 27; 19 T. L. Fletcher v. Marille, '97, 16, 45	h. 688	3; 72 1	J. C	h. 791	; 89 L.	Т.	
473; 52 W. R. 27; 19 T. L.	R. 682	•••	•••	•••	•••	188,	189
Fletcher v. Marillier, 9 A. & E. 45	7	•••	•••	•••	•••	•••	274
45 W. R. 471	•••	•••	•••	•••	•••	•••	507
Fletcher v. Saunders, 1 Moo. & R.	375						300
Flight " Berton S My & K 289							
		•••	•••	•••	•••	•••	
Flight a Bentley 7 Sim 140	•••	•••			•••	•••	416
Flight v. Bentley, 7 Sim. 149	•••	•••	•••		 	•••	416 449
Flight v. Bentley, 7 Sim. 149 Flight v. Bolland, 4 Russ. 298	•••	•••	•••		•••		416 449 118
Flight v. Bentley, 7 Sim. 149 Flight v. Bolland, 4 Russ. 298 Flight v. Clarke, 13 M. & W. 155		•••			•••		416 449 118 354
Flight v. Bentley, 7 Sim. 149 Flight v. Bolland, 4 Russ. 298 Flight v. Clarke, 13 M. & W. 155 Flight v. Glossop, 2 Bing. N. C. 1	25						416 449 118 354 437
45 W. R. 471 Fletcher v. Saunders, 1 Moo. & R. Flight v. Barton, 3 My. & K. 282 Flight v. Bentley, 7 Sim. 149 Flight v. Bolland, 4 Russ. 298 Flight v. Clarke, 13 M. & W. 155 Flight v. Glossop, 2 Bing. N. C. 1 Flight v. Provident Association of	 25 Londo	 n, 11 T.	 . L. R.	 391;1	 2 Ibid.	51	416 449 118 354 437 129
Flint v. Brandon, 8 Ves. 159				•••			416 449 118 354 437
Flint v. Brandon, 8 Ves. 159				•••			416 449 118 354 437 129
Flint v. Brandon, 8 Ves. 159 Flitters v. Allfrey, L. R. 10 C. P. 23 W. R. 442	 29 ; 44	L. J. (D. P. 78	; 31 I	 T. 87	 '8 ; 388.	416 449 118 354 437 129 210
Flint v. Brandon, 8 Ves. 159 Flitters v. Allfrey, L. R. 10 C. P. 28 W. R. 442 Flord v. Lyone & Co. '97. 1 Ch. 6	 29 ; 44	L. J. (C. P. 78 Ch. 850	 3; 31 I	 1. T. 87	 '8 ; 388,	416 449 118 354 437 129 210 580
Flint v. Brandon, 8 Ves. 159 Flitters v. Allfrey, L. R. 10 C. P. 28 W. R. 442 Flord v. Lyone & Co. '97. 1 Ch. 6	 29 ; 44	L. J. (C. P. 78 Ch. 850	 3; 31 I	 1. T. 87	 '8 ; 388,	416 449 118 354 437 129 210 580
Flint v. Brandon, 8 Ves. 159 Flitters v. Allfrey, L. R. 10 C. P. 28 W. R. 442 Flord v. Lyone & Co. '97. 1 Ch. 6	 29 ; 44	L. J. (C. P. 78 Ch. 850	 3; 31 I	 1. T. 87	 '8 ; 388,	416 449 118 354 437 129 210 580
Flint v. Brandon, 8 Ves. 159 Flitters v. Allfrey, L. R. 10 C. P. 28 W. R. 442 Flord v. Lyone & Co. '97. 1 Ch. 6	 29 ; 44	L. J. (C. P. 78 Ch. 850	 3; 31 I	 1. T. 87	 '8 ; 388,	416 449 118 354 437 129 210 580
Flint v. Brandon, 8 Ves. 159 Flitters v. Allfrey, L. R. 10 C. P. 28 W. R. 442 Flord v. Lyone & Co. '97. 1 Ch. 6	 29 ; 44	L. J. (C. P. 78 Ch. 850	 3; 31 I	 1. T. 87	 '8 ; 388,	416 449 118 354 437 129 210 580
Flint v. Brandon, 8 Ves. 159 Flitters v. Allfrey, L. R. 10 C. P. 28 W. R. 442 Flord v. Lyone & Co. '97. 1 Ch. 6	 29 ; 44	L. J. (C. P. 78 Ch. 850	 3; 31 I	 1. T. 87	 '8 ; 388,	416 449 118 354 437 129 210 580
Flint v. Brandon, 8 Ves. 159 Flitters v. Allfrey, L. R. 10 C. P. 28 W. R. 442 Flord v. Lyone & Co. '97. 1 Ch. 6	 29 ; 44	L. J. (C. P. 78 Ch. 850	 3; 31 I	 1. T. 87	 '8 ; 388,	416 449 118 354 437 129 210 580
Flint v. Brandon, 8 Ves. 159 Flitters v. Allfrey, L. R. 10 C. P. 23 W. R. 442 Floyd v. Lyons & Co., '97, 1 Ch. 6 45 W. R. 435 Flureau v. Thornhill, 2 W. Bl. 107 Foley v. Addenbrooke, 13 M. & W Foley v. Addenbrooke, 4 Q. B. 197 Foquet v. Moor, 7 Ex. 870; 22 L. Forbes v. Moffatt, 18 Ves. 330	29; 44 33; 6 78 7. 174 7; 12] J. Ex	L. J. (Ch. 350	3; 31 I 0; 76 l 	T. 87 L. T. 28 210,	78; 388, 51; 526, 	416 449 118 354 437 129 210 580
Flint v. Brandon, 8 Ves. 159 Flitters v. Allfrey, L. R. 10 C. P. 23 W. R. 442 Floyd v. Lyons & Co., '97, 1 Ch. 6 45 W. R. 435 Flureau v. Thornhill, 2 W. Bl. 107 Foley v. Addenbrooke, 13 M. & W Foley v. Addenbrooke, 4 Q. B. 197 Foquet v. Moor, 7 Ex. 870; 22 L. Forbes v. Moffatt, 18 Ves. 330	29; 44 33; 6 78 7. 174 7; 12] J. Ex	L. J. (Ch. 350	3; 31 I 0; 76 l 	T. 87 L. T. 28 210,	78; 388, 51; 526, 	416 449 118 354 437 129 210 580
Flint v. Brandon, 8 Ves. 159 Flitters v. Allfrey, L. R. 10 C. P. 23 W. R. 442 Floyd v. Lyons & Co., '97, 1 Ch. 6 45 W. R. 435 Flureau v. Thornhill, 2 W. Bl. 107 Foley v. Addenbrooke, 13 M. & W Foley v. Addenbrooke, 4 Q. B. 197 Foquet v. Moor, 7 Ex. 870; 22 L. Forbes v. Moffatt, 18 Ves. 380 Ford's Settled Estate, Re, 8 Eq. 36 Ford v. Ager, 2 H. & C. 279; 32	29; 44 33; 6 78 7. 174 7; 12] J. Ex	L. J. (Ch. 350	3; 31 I 0; 76 l 	T. 87 T. 28 210, 	78; 388, 51; 526, 219,	416 449 118 354 437 129 210 580 366 115 530 489 484 43
Flint v. Brandon, 8 Ves. 159 Flitters v. Allfrey, L. R. 10 C. P. 23 W. R. 442 Floyd v. Lyons & Co., '97, 1 Ch. 6 45 W. R. 435 Flureau v. Thornhill, 2 W. Bl. 10; Foley v. Addenbrooke, 13 M. & W Foley v. Addenbrooke, 4 Q. B. 19; Foquet v. Moor, 7 Ex. 870; 22 L. Forbes v. Moffatt, 18 Ves. 390 Ford's Settled Estate, Re, 8 Eq. 36 Ford v. Ager, 2 H. & C. 279; 32 L. T. 546: 11 W. R. 1073	29; 44 633; 6 78 7. 174 7; 12] J. Ex 	L. J. (6 8 L. J. L. J. Q. . 35 Ex. 26	Ch. 350	3; 31 I 76 I 3 3	T. 87 T. 29 210, 	78; 388, 51; 526, 219, ; 8	416 449 118 354 437 129 210 580 366 115 530 489 484 43
Flint v. Brandon, 8 Ves. 159 Flitters v. Allfrey, L. R. 10 C. P. 23 W. R. 442 Floyd v. Lyons & Co., '97, 1 Ch. 6 45 W. R. 435 Flureau v. Thornhill, 2 W. Bl. 10; Foley v. Addenbrooke, 13 M. & W Foley v. Addenbrooke, 4 Q. B. 19; Foquet v. Moor, 7 Ex. 870; 22 L. Forbes v. Moffatt, 18 Ves. 320 Ford's Settled Estate, Re, 8 Eq. 36 Ford v. Ager, 2 H. & C. 279; 32 L. T. 546; 11 W. R. 1073 Ford v. Metrop, Ry. Co., 17 Q. B.	29; 44 633; 6 78 7. 174 7; 12] J. Ex 	L. J. (6 8 L. J. L. J. Q. . 35 Ex. 26	Ch. 350	3; 31 I 76 I 3 3	T. 87 T. 29 210, 	78; 388, 51; 526, 219, ; 8	416 449 118 354 437 129 210 580 366 115 530 160 489 484 43 76
Flint v. Brandon, 8 Ves. 159 Flitters v. Allfrey, L. R. 10 C. P. 23 W. R. 442 Floyd v. Lyons & Co., '97, 1 Ch. 6 45 W. R. 435 Flureau v. Thornhill, 2 W. Bl. 10; Foley v. Addenbrooke, 13 M. & W Foley v. Addenbrooke, 4 Q. B. 19; Foquet v. Moor, 7 Ex. 870; 22 L. Forbes v. Moffatt, 18 Ves. 390 Ford's Settled Estate, Re, 8 Eq. 36 Ford v. Ager, 2 H. & C. 279; 32 L. T. 546; 11 W. R. 1073 Ford v. Metrop. By. Co., 17 Q. B.	29; 44 633; 6 7; 174 7; 12] J. Ex 09 L. J.	L. J. (6 8 L. J. L. J. Q. . 35 Ex. 26	Ch. 78 Ch. 350 B. 163 9; 9 J1	3; 31 I 0; 76 I 3 ur. N. :	210, S. 804 L.	78; 388, 51; 526, 219, ; 8	416 449 118 354 437 129 210 580 366 115 530 160 489 484 43

Paul a france of T T Cl. 177							AGE
Ford v. Tynte, 31 L. J. Ch. 177 Fordham v. Akers, 4 B. & S. 578 Formby v. Barker, '03, 2 Ch. 589	. 99 T	1.0	D 47	•••	•••	•••	261 310
Formby v. Barker, '03, 2 Ch. 539	, 00 Ja	J. Q. J	71 <i>R</i> •	80 T.	T 949 -	K1	
W. R. 646	, , , , , , ,			18	34. 860.	438.	489
Forrer v. Nash, 35 Beav. 167	···	•••	•••		•••	115.	428
Forrester's Case, 1 Sid. 41	•••	•••		•••	•••	•••	8
Forster's Case, 1 Sid. 41 Forster v. Cookson, 1 Q. B. 419;	10 L.	J. Q. B	. 167;	5 Jur.	1083	•••	316
Forster v. Rowland, 7 H. & N. 1	03;39	L. J. E	lx. 896	•••	•••	103,	107
Foster v. Hilton, 1 Dowl. 85	•••	•••	•••	•••	•••	319,	820
Foster v. Mapes, Cro. Eliz. 212	•••	•••	•••	•••	•••	238,	399
Foster v. Pierson, 4 T. R. 617 Foster v. Reeves, '92, 2 Q. B. 25	K . 81	τ.¨; Λ	B 76	9 . 47	T. T. K	200, 97 .	988
40 W. R. 695						81	, 82
Foster v. Wheeler, 38 Ch. D. 130): 57 I	. J. Ch	. 871	: 69 L.	T. 15	: 37	,
W D 40							115
Foulger v. Arding, '02, 1 K. B. 7	700 ; (re	versing	'01, 2	K. B	. 151);	70	
L. J. K. B. 580; 71 L. J. K	B. 49	9;84]	. T. 4	67;86	L. T. 4	88;	
49 W. R. 442; 50 W. R. 41	7;18,7	L. L. B.	422	38	3 9 , 892,	398,	395
Foulger v. Arding, '02, 1 K. B. 7 L. J. K. B. 580; 71 L. J. K. 49 W. R. 442; 50 W. R. 41 Foulger v. Taylor, 5 H. & N. 202 Fowell v. Tranter, 3 H. & C. 45	; 29 L	.J.KX.	104	,	D 017	274,	322
W P 145	8;04	L. J. E.	x. 0;	11 14 1	1. 817	; 18	499
Fowle v. I rancer, 3 H. & C. 48 W. R. 145 Fowkes v. Joyce, 2 Vern. 129; 3 Fowle v. Freeman, 9 Ves. 351 Fowle v. Welsh, 1 B. & C. 29 Fowler v. Johnstone, 8 T. L. R. Fox v. Dalby, L. R. 10 C. P. 285 23 W. K. 244 Fox v. Swann, Sty. 482 Frame v. Dawson, 14 Ves. 386 Francis v. Doe, 4 M. & W. 331 Francis v. Hayward, 22 Ch. D. 1 31 W. R. 488	TAV 9	80	•••	•••	248	258	260
Fowle v. Freeman, 9 Ves. 851	1201. 4		•••	•••	240	, 200,	110
Fowle v. Welsh, 1 B. & C. 29	•••	•••	•••	•••	•••	•••	399
Fowler v. Johnstone, 8 T. L. R.	827	•••	•••	•••	•••	•••	849
Fox v. Dalby, L. R. 10 C. P. 285	5; 44 L	. J. C.	P. 42	; 31 J	L. T. 4	178;	
_ 23 W. R. 244	•••	***	•••	•••	•••	•••	88
Fox v. Swann, Sty. 482	•••	•••	•••	•••	•••	•••	421
Frame v. Dawson, 14 Ves. 386	•••	•••	•••	•••	•••	112,	113
Krancis v. Doe, 4 M. & W. 351	77 . K9	T"T /	T. 201	. 40 T	יייי פ	07.	10
31 W. R. 488	177 , 02	M. U. (ли. 201	, 40 1	J. I. Z	,	135
Francis v. Wigzell, 1 Madd, 258	•••	•••	•••	•••	•••	•••	15
Francis v. Wvatt. 1 W. Bl. 483	: 3 Bur	r. 1498	•••	•••	•••	258.	260
Frank Warr & Co. v. London Co	ounty C	ouncil,	'04,	1 K. I	3. 718	; 73	
L. J. K. B. 362; 90 L. T.	368; 5	2 W. R	. 405;	68 J.	P. 335	; 19	
Francis v. Wigzell, 1 Madd. 258 Francis v. Wigzell, 1 M. Bl. 483 Frank Warr & Co. v. London Co. L. J. K. B. 362; 90 L. T. T. L. R. 436; 20 T. L. R. 3 Franklin v. Carter, 1 C. B. 750;	46; 2]	L. G. R.	. 728		8	6, 87,	422
Franklin v. Carter, 1 C. B. 750;	14 L.	J. C. P.	241;	9 Jur.	874	•••	229
Trankini v. Howes, 24 L. 1. 540	•••	•••	***	•••	•••	•••	410
Franklinski v. Ball, 34 L. J. Ch.	. 190 ;) · 18 T.	OS DERI	7. DOU 12. SAG	· 13 J	 nr 881	•••	69 282
Freeman v. Rosher, 13 Q. B. 780 Freeman v. West, 2 Wils. 165	, 10 L	. v. v.	D. 040	, 100	ui. 001	•••	148
French v. Macale, 2 Dr. & War.	269: 4	Ir. Eq.	R. 56	8	•••		228
French v. Patton, 9 East, 351			•••	•••		•••	184
French v. Phillips, 1 H. & N.	564; 20	5 L. J.	Ex.	32;2	Jur. N	. Ś.	
1169	•••	•••	•••	•••	•••	•••	278
Friary Holroyd and Healey's Br	ewei ies	v. Sing	leton,	99, 1 (Jh. 86	; 68	
L. J. Ch. 13; 47 W. R. 98 622; 81 L. T. 101; 47 W.	; app.,	99, 2	Ch. 26	1; 68	L. J.	Un.	490
Research a Shaw 90 () R I) 87.	4 · 67 I		K 99	5 · 5×	1. 1	xu ·	432
36 W. R. 236	z , U, L	. v. v.	D. 22	0,0 0		ω,	577
Froglev v. E. Lovelace, Johns. 3	33	•••	•••	•••	•••	122,	
Frosel v. Welch, Cro. Jac. 403	•••	•••	•••	•••	•••		64
Frusher v. Lee, 10 M. & W. 709	; 12 L.	J. Ex.	821	•••	•••	•••	808
Fry v. Fry, 27 Beav. 146; 28 L.	. J. Ch.	598	•••	•••	•••	•••	454
36 W. R. 236 Frogley v. E. Lovelace, Johns. 3 Frosel v. Welch, Cro. Jac. 403 Frusher v. Lee, 10 M. & W. 709 Fry v. Fry, 27 Beav. 146; 28 L. Fryer v. Coombs, 11 A. & E. 403 Fryer v. Ewart, '02, A. C. 187; Manson 281 · 18 T. R. A.	<u>.</u>	T "C"	400		m		181
Fryer v. Ewart, 'Uz, A. C. 187;	/L LL	J. UD.	455;	00 L.	1. 242	179	800
	20	•••	•••	•••	•••	178,	503
Fryett v. Jeffreys, 1 Esp. 398 Fryman's Estate, Re, 38 Ch. D.	468 : 5	7 L. J.	Ch. 86	2 : 58	L. T. 8	72 :	
36 W. R. 681							325
Fulder, Ex parte, 8 Dowl. P. C.	585 : 4	Jur. 50	7	•••	•••	•••	582
Fuller, Ex parte, 13 L. J. M. C. Fuller v. Abbot, 4 Taunt. 105	141;8	Jur. 60	4	•••	•••	•••	273
Fuller v. Abbot, 4 Taunt. 105	•••	•••	•••	•••	• • •	2 29,	385

Fulmerstone v. Steward, Plowd. 106					P.	490
Furley v. Wood, 1 Esp. 198	•••	•••	•••	•••		470
Furneaux v. Fotherby, 4 Camp. 136	•••	•••	•••	•••	275,	
Furness v. Bond, 4 T. L. R. 457	•••		•••	•••	80,	125
Furness c. Meek, 2/ L. J. Ex. 34	•••					188
Furness Ry. Co. v. Cumberland Building	ng Societ	y, 52 l	L. T. 1			140
Furnival v. Crew, 3 Atk. 83 Furnival v. Grove, 8 C. B. N. S. 496;	90 T. T	CP	8	•••	 236,	167 497
Fury v. Smith, 1 Huds. & Br. 785	, 00 22 0			•••	200 ,	185
Gabell v. Shevell, 5 Taunt. 81				•••	•••	229
Gabriel v. Blankenstern, 13 Q. B. D. 6	84; 33	w. K.	191	•••	•••	457 242
Gage v. Acton, 1 Salk. 325 Gage v. Collins, L. R. 2 C. P. 381; 36	et. J. C	 P 14	4 · 15	w R	KRR	323
						849
Gale v. Bates, 3 H. & C. 84; 33 L. J.	Ex. 235	; 10 J	ar. N.	8. 734	10	
			•••	•••	•••	371
Gambrell v. Earl of Falmouth, 4 A. &	E. 73	•••	•••	•••		289
Gandy F Inhham KR & Q 78 . 0 R	. Q 1K.	99 T.	1 "i F	1 1 1 1	. 10	431
Gardiner v. Colyer, 12 W. R. 979; 10 Gardiner v. Colyer, 12 W. R. 979; 10 Gardiner v. Norman, Cro. Jac. 617 Gardiner v. Williamson, 2 B. & Ad. 33 Gardiner v. Furness Ry. Co., 47 J. P. 2 Gardiner v. Ingram, 61 L. T. 729 Garrard v. Frankel, 30 Beav. 445; 31 985		00 L	, ų, <u>r</u>	». 101 j	94,	835
Gange v. Lockwood, 2 F. & F. 115	•••	•••	•••	•••		
Gardiner v. Colyer, 12 W. R. 979; 10	L. T. 71	5	•••	•••	•••	411
Gardiner v. Norman, Cro. Jac. 617		•••	•••			19
Cardiner v. Williamson, 2 B. & Ad. 83	90	•••	•••	125	, 126,	719
Gardner v. Furness Ry. Co., 47 J. P. 2	32	•••	•••	•••	 465,	898 474
Garrard v. Frankel. 30 Beav. 445: 31	L. J. (Ch. 60	4:83	Jur. N.	8.	
985	•••	•••	•••	•••	126,	192
985 Garrard v. Tuck, 8 C. B. 231; 18 L. J	r. C. P. 8	38	•••	•••	•••	93
Garrett v. Lynch, 5 B. & C. 589	•••	•••	•••	•••		442
Gaskell v. King, 11 East, 165	0 B T	810	 . KR T.	ï. 0	229,	383
Gas Light and Coke Co. v. Hardy, 17 168; 55 L. T. 585; 35 W. R. 50	Q. D. D	. 018	, 50 1	. J. W.	<i>D</i> .	266
Gas Light and Coke Co. v. Holloway.	02 L. I.	434	•••	•••	•••	544
Gas Light and Coke Co. v. Towse, 35	Ch. D. 5	19 ; 56	3 L. J.	Ch. 8	389 ;	
56 L. T. 602		~	•••	5	4, 57,	115
Gas Light and Coke Co. v. Turner, 6 E Gauntlett v. King, 3 C. B. N. S. 59	sing. N.	C. 324	•••	•••	168,	354
Gawler v. Chaplin, 2 Ex. 503; 18 L.	I Ex 42	•••	•••	•••	266,	318
Gearns v. Baker, 10 Ch. 355; 44 L. J.	Ch. 334;	33 L.	T. 86	: 23 W	R.	0_0
548	•••	•••	•••	•••	•••	2
Gebhardt v. Saunders, 1892, 2 Q. B. 4	52; 67]	L. T. 6	84; 40	W.R.	571	383
Gee, Re, 24 Q. B. D. 65; 59 L. J. Q.	B. 16; 6	1 L. T	. 645;	38 W		456
148 Gedge v. Bartlett, 17 T. L. R. 48	•••	•••	•••	•••	153.	439
Geekie v. Monk, 1 C. & K. 307	•••	•••	•••	•••		490
Geekie v. Monk, 1 C. & K. 307 General Assurance Co. v. Worsley, 64 General Share and Trust Co. v. Wotley	L. J. Q.	B. 253	; 72 L	. T. 35	8	478
General Share and Trust Co. v. Wester	Brick (Co., 20	Ch.]	J. 200	,	
W. B. 445	A 10.		116	178	, 828,	
Gent v. Cutts, 11 Q. B. 288; 17 L. J. Gentle v. Faulkner, '00, 2 Q. B. 267 777; 82 L. T. 708; 15 T. L. R. 4 George v. Coates, 88 L. T. 48	Q. B. 50	1 0	nr. 113	 	rhid	311
777 : 82 L. T. 708 : 15 T. L. R. 4	, 00 <u>1</u> . 66 : 16 <i>1</i>	bid. 39	7	421	, 507,	509
George v. Coates, 88 L. T. 48		•••	•••	•••	••••	393
German v. Chapman, 7 Ch. D. 2/1; 4	7 L. J. C	h. 250	; 37]	L. T. (385;	
26 W. R. 149	•••	•••	•••	•••	•••	
Gerrard v. Clifton, 7 T. R. 676	•••	•••	•••	•••		205 228
Gerrard v. Cinton, 7 T. K. 676 Gerrard v. O'Reilly, 3 Dr. & War. 414 Gethin v. Wilks, 2 Dowl. 189 Gibbins v. Buckland, 1 H. & C. 736 Gibbins v. Howell, 3 Madd. 469 Gibbon v. Kirk, 1 Q. B. 850; 6 Jur. 9 Gibbons v. Chambers, C. & E. 577; 1 Gibbons v. Monlton, Finch, 346	•••	•••	•••	•••	321.	328
Gibbins v. Buckland. 1 H. & C. 736	•••	•••	•••	•••		576
Gibbins v. Howell, 3 Madd. 469	•••			•••	•••	72
Gibbon v. Kirk, 1 Q. B. 850; 6 Jur. 9	9		•••	•••		380
Gibbons v. Chambers, C. & E. 577; 1	T. L. R.	530	•••	•••	235,	854
Gibbons v. Moulton, Finch, 346	•••	•••	•••	•••	•••	15

	_					AGE
Gibbs v. Cruikshank, L. R. 8 C. P. 454						
735; 21 W. R. 734	. •••	•••	•••	249,		
Gibbs v. Cruikshank, 28 L. T. 104 Gibson v. Doeg, 2 H. & N. 615; 27 L. J. Gibson v. Hammersmith Ry. Co., 2 Dr.	 I Ex 27	, 	•••	•••	•••	249 366
Gibson v. Hammersmith Ry. Co., 2 Dr.	& Sm.	603 : 8	OT T	. Cb. 3	97.	
9 Jur. N. S. 221; 8 L. T. 43; 11 V. Gibson v. Holland, L. R. 1 C. P. 1 Gibson v. Ireson, 3 Q. B. 39 Gibson v. Searl, Cro. Jac. 84, 176 Giddens v. Dodd, 3 Drew. 485; 25 L. J. Gilbarton v. Biobards 4 L. F. N. 277.	W. R. 22	9	•••	518,	518,	520
Gibson v. Holland, L. R. 1 C. P. 1	•••	•••	•••	•••	•••	107
Gibson v. Ireson, 3 Q. B. 39	•••	•••	•••	•••	•••	258
Giddens a Dodd & Drew 485 95 L.	Ch 45		•••	•••	480	489
Gilbertson v. Richards, 4 H. & N. 277;	5 Thid.	458 · 2	8 L. J.	Ex. 1	58 ·	102
29 Ibid. 213; 6 Jur. N. S. 672 Giles v. Hooper, Carth. 135			•••	•••	•••	220
Giles v. Hooper, Carth. 185	•••	•••	•••	151,	153,	387
Giles v. Hooper, Carth. 135 Giles v. Spencer, 3 C. B. N. S. 244; 26	L J. C.	P. 237	7;3 J	11 P N	S.	
820	•••	•••	•••	•••	246,	
Gillard a Cheshira Lines Committee 35	w R	048	•••	•••	•••	274 192
Gillingham v. Gwyer, 16 L. T. 640			•••	•••	249,	
Gilman v. Elton, 3 Br. & B. 75	•••	•••	•••	•••		
Gimbart v. Pelah, 2 Str. 1272	•••	•••	•••	•••		292
Girardy v. Richardson, 1 Esp. 13	•••	•••	***	•••	•••	354
Gisbourn v. Hurst, 1 Salk. 249		 T Ob		T		258
Gjers, Re, Cooper v. Gjers, '99, 2 Ch. 54	1; 08 L.	J. Ch.				352
689; 47 W. R. 535 Gladman v. Plumer, 15 L. J. Q. B. 79;	10 Jur	109	•••	•••	88	247
Gladstone, Re, '00, 2 Ch. 101; 69 L.	J. Ch. 4	55: 82	: . С. Т			
W. R. 531; 16 T. L. R. 361				42	, 52,	197
W. R. 531; 16 T. L. R. 361 Glasdir Copper Works, Re, '04, 1 Ch. 8	19 ; 73 L	. J. Cl	ı. 461 ;	90 L	Т.	
7 L 20 000 000 000 000 000	•••	•••	•••		493,	020
Glasgow Corporation v. Glasgow Tramws	ay Co.,	98, A.	C. 631	D		393
Glasgow (Lord Provost of) v. Fairie, 13	App. Ca	8. 05/	, 98 T	. J. P.		199
33; 60 L. T. 274; 37 W. R. 627 Glass v. Patterson '02 2 Jr. R. 660	•••	•••	•••	•••	•••	242
Glass v. Patterson, '02, 2 Ir. R. 660 Gledhill v. Hunter, 14 Ch. D. 492; 49	L. J. Ch	. 333 :	42 L	T. 3	92 :	
28 W. R. 530	•••	•••	•••	•••	•••	574
Glegg, Ex parte, 19 Ch. D. 7; 51 L. J	. Ch. 30	87 ; 45	L. T	. 484;	30	
W. R. 144		•••	•••	•••	•••	457
Glen v. Dungey, 4 Ex. 61; 18 L. J. Ex.	. 359	•••	•••	•••	***	123
Glenwood I umber Co. a. Phillips, 78 I.	T P C	80	•••	Adda	144, nda	349
Glen v. Dungey, 4 Ex. 61; 18 L. J. Ex. Glenham v. Hanby, 1 Ld. Raym. 789 Glenwood Lumber Co. v. Phillips, 73 L. Glover v. Cope, 3 Lev. 326; 4 Mod. 80		. 02	•••		iiua,	448
Glynn v. Thomas, 11 Ex. 870; 25 L. J.	 Ex. 125	: 2 Ju	r. N. 8	3. 378	•••	278
Goddard's Case, 2 Rep. 4 b	•••	•••	•••	•••	•••	131
						537
Godwin v. Schweppes, '02, 1 Ch. 926;	71 L. J. (140
50 W. R. 409	 C P 9	79	•••	•••	•••	140
Goff v. Harris, 5 M. & Gr. 573; 12 L. J Goldstein v. Hollingsworth, '04, 2 K.			I	3 898	. 91	141
L. T. 85; 2 L. G. R. 879; 20 T. L	R. 550	: 68 J.	P. 383		392.	396
Gooch v. Clutterbuck, '99, 2 Q. B. 148	; 68 L.	j. Q. 1	3. 808 ;	81 L.	T.	
9; 47 W. R. 609	•••	•••	•••	•••	442,	443
Good, Ex parte, 13 Q. B. D. 731; 54 L	-					
W. R. 22	•••	•••	•••	•••	•••	458
Goodlend r. Blawith 1 Comp. 477	•••	•••	•••	•••	•••	472 224
Goodland v. Blewith, 1 Camp. 477 Goodland v. Ewing, C. & E. 43	•••			·	•••	454
Goodright v. Cator, 2 Dougl. 477		•••	•••	•••	•••	499
Goodright v. Cator, 2 Dougl. 477 Goodright v. Cordwent, 6 T. R. 219		•••		•••	•••	479
Goodright v. Davids, Cowp. 803	•••	•••	•••	•••	•••	500
Goodright v. Mark, 4 M. & S. 30 Goodright v. Richardson, 3 T. R. 462 Goodright v. Straphan, Cowp. 201	···	•••	•••	•••	• • • •	482
Goodright a Stranken Come 201	•••	•••	•••	100,	146,	
Goodright v. Straphan, Cowp. 201 Goodright v. Vivian, 8 East, 190	•••	•••	•••	•••	•••	19 349
Goodtitle v. Funucan, 2 Doug. 565	•••	•••	•••	•••	•••	54
						-

						_	
Goodtitle v. Gibbs, 5 B. & C. 709						,	145
Goodtitle v. Herbert, 4 T. R. 680	•••	•••	•••	•••	•••	92.	463
Goodtitle v. Paul, 2 Burr. 1089	•••	•••	•••	•••	•••		
Goodtitle n. Saville, 16 East, 87		•••	•••	•••	•••	•••	170
Goodtitle v. Southern, 1 M. & S. 2	99 `		•••	•••	•••	•••	133
Goodtitle v. Woodward, 3 B. & A.	689	•••	•••	•••	•••	. •••	475
Goodwin v. Cheveley, 4 H. & N. 6	81	•••	•••	•••	•••	•••	264
Goodwin v. Longhurst, Cro. Eliz.	585	•••	•••	•••	•••	65	, 66
Goodwin v. Saturley, 16 T. L. R.	437	•••	•••	•••	•••	•••	428
	•••	•••	•••	•••	•••	•••	
Gore v. Gofton, 1 Str. 643		 T 17 0		•••	•••	70	319
Gore v. Lloyd, 12 M. & W. 463; Gore v. Wright, 8 A. & E. 118; 2	10 is. c	J. E.X. C	900	•••	•••	19,	220 492
Gorely, Ex parte, 4 D. J. & S. 477	. 94 T	i. TRI	tev 1	 · 18 W	TR AC	٠	382
Garges v Stanfeld Cro Eliz 593	, 011	Da		, 10 11	• 46. 00	• • • • • • • • • • • • • • • • • • • •	349
Gorges v. Stanfeld, Cro. Eliz. 598 Goring v. Goring, 3 Swanst. 661 Gorton v. Falkner, 4 T. R. 565	•••					•••	350
						257.	
Gorton v. Gregory, 8 B. & S. 90;	31 L.	J. Q. B.	302;	6 L. I	. 656;	10	
W. R. 713	•••		•••	•••	•••	•••	437
Gosling v. Woolf, '93, 1 Q. B. 39;	68 L.	T. 89;	41 W.	R. 10	6	•••	114
Gott v. Gandy, 2 E. & B. 845; 23	L. J.	Q.B.1	; 18 Jr	ır. 310	•••	•••	334
Gough v. Gough, '91, 2 Q. B. 665	; 60 L	. J. Q.	B. 726	; 65 T	. T. 1	10;	
39 W. R. 598		•••	•••	•••	•••	545,	
Gough v. Howard, Peake, Add. Co			•••	•••	 70 T	368,	208
Gough v. Wood & Co., '94, 1 Q. I	D. /13	, 03 14	J. Q. I				522
297; 42 W. R. 469 Gould, Ex parte, 13 Q. B. D. 454;	61 T.	T 988	•••	•••	•••	•••	509
Gould v. Bradstock, 4 Taunt. 562	JI L.	1.000	•••	•••	•••	•••	
Gouldsworth v. Knights, 11 M. &		7 : 12 T	. J. Ex	283	•••		256
Gourlay v. Duke of Somerset, 1 V.	. & B.	68					414
Gowan v. Christie, L. R. 2 H. L. (Sc.) 27	3	•••	•••	•••	192,	205
Gower v. Hunt. Barnes, 290			•••			•••	229
Gower v. Postmaster-General, 57 I	J. T. 5	27	•••		•••	•••	487
Grace. Ex parte. 1 B. & P. 376			•••	•••	•••	•••	74
Grace v. Morgan, 2 Bing. N. C. 53 Graham v. Allsopp, 3 Ex. 186; 18 Graham v. Craig, '02, 1 fr. R. 264 Graham v. Tate, 1 M. & S. 609 Graham v. Wade, 16 East, 29	34		•••	•••	•••		
Graham v. Allsopp, 3 Ex. 186; 18	5 L. J.	Ex. 85	•••	•••	•••		
Craham v. Craig, '02, 1 Ir. R. 204	•••	. ***	•••	•••		368,	439
Graham v. 18te, 1 M. & S. 009	•••	•••	•••	•••	228,		388
Graham v. Wade, 16 East, 29 Graham v. Whichelo, 1 Cr. & M.	188	•••	•••	•••	•••	•••	489
Grand Canal Co. v. M Namee, 20	L. R. 1	ir. 131	•••	•••		350,	
Granger v. Collins, 6 M. & W. 458			•••	•••	368.	397.	399
Grant v. Ellis, 9 M. & W. 113	•••	•••	•••		368, 279,	331,	571
Grant v. Langston, '00, A. C. 383	; 69 L	. J. P. (C. 68	•••	•••	•••	135
Gravenor v. Woodhouse, 1 Bing. 8	38;2.	[bid. 7]	l	•••	•••	•••	78
Graves v. Weld. 5 B. & Ad. 105:	2 L. J.	. K. B.	176	•••		531,	532
Gray, Re, '01, 1 Ch. 239; 70 L. J	. Ch. 1	133; 84	L. T.	114;	49 W.	R.	• • •
298		T 175 0		•••	•••	•••	188
Gray v. Bompas, 11 C. B. N. S. 52	20;ຄ. ເວລາ	L. 1. 01	D K11			04.	480
Gray v. Bonsall, '04, 1 K. B. 601 52 W. R. 387; 20 T. L. R. 33	.; 10 J	J. J. K.	. Б. эт.	, ,	L. 1. 4	J4 ,	505
Gray v. Stait, 11 Q. B. D. 668; 52	2 L. J.	O. B.	 412 : 49	т. ії	. 288 :	31	5 00.
W. R. 662		W. D.			. 200 ,		273
Great Northern and City Ry. Co.	v. Tille	ett. '02.	1 K. B	. 874	•••	•••	99
Great Western Ry. Co. v. Blades,	'01, 2	Ch. 624	; 70 L	. J. Ch	. 847 ;		
L. T. 308; 65 J. P. 791	•••	•••	•••	•••	•••		199
L. T. 308; 65 J. P. 791 Great Western Ry. Co. v. Rous, L Great Western Ry. Co. v. Smith,	. R. 4	H. L. 6	350	•	•••	204,	205
	15 L. J	. Ch. 2	235 ; 3 4	L. T.	267;	24	_,
W. R. 448							
Great Western Ry. Co. v. Smith, 2	Ch. L). Z35 ;	3 App.	Cas. 1	00	492,	495
Green's Case, Cro. Eliz. 3 Green v. Austin, 3 Camp. 260	•••	•••	•••	•••	əuu,	oui,	91A
Creen of Release On R ook. 11 T	ï. 0	R #2 .	6 In-	436	•••	344,	947
Green v. Eales, 2 Q. B. 225; 11 L. Green v. James, 6 M. & W. 656	. v. v.	D. 00 ;	o our.	700			
CICLE V. Vanico, V Di. G. 17. USV	•••	•••	•••	•••	•••	•••	-10,

						**	400
Green v Konke, 18 C. R. 549						r	AGE 71
Green v. Kopke, 18 C. B. 549 Green v. Listowell, 2 Ir. L. R. 384 Green v. Low, 22 Beav. 625; 2 Ju Green v. Marsh, '92, 2 Q. B. 380;	١	•••	•••	•••	•••	•••	452
Green v. Low, 22 Beav. 625; 2 Ju	r. N.	S. 848	•••	•••	•••	•••	166
Green v. Marsh, '92, 2 Q. B. 380;	61 L.	J. Q.	B. 442	; 66 L	. T. 4	80;	
40 W. R. 449 Green v. Symons, 13 T. L. R. 301 Greenaway v. Adams, 12 Ves. 395 Groenaway v. Hart, 14 C. B. 340;	•••	•••	•••	•••	•••	•••	84
Green v. Symons, 13 T. L. R. 801	•••	•••	•••	•••	•••	130,	
Greenaway v. Adams, 12 Ves. 395	··· -	···~ -		··· -	•••	•••	
Greenaway v. Hart, 14 C. B. 340;	28 L.	J. C. F	'. 115;	18 Jur	. 449	•••	448
Greenfield v. Hanson, 2 T. L. R. &	10 EK	•••	•••	•••	007	900	410
Amenyilla Estata Re 11 I. P. Ir	192	•••	•••	•••	221,	90¥,	410
Greenfield v. Hanson, 2 T. L. R. & Greenslade v. Tapscott, 1 C. M. & Greenville Estate, Re, 11 L. R. Ir. Greenwell v. Low Beechburn Coal	Co 3	7. 2 O	R 168	 		R	*
648 : 76 L. T. 759		., - 4		.,			200
643; 76 L. T. 759 Greenwood v. Bairstow, 5 L. J. Ch Greenwood v. Sutcliffe, '92, 1 Ch.	. 179	•••	•••	•••	•••	•••	447
Greenwood v. Sutcliffe, '92, 1 Ch. W. R. 214 Greenwood v. Tyber, Cro. Jac. 568 Gregg v. Coates, 23 Beav. 33; 2 Ju Gregory v. Doidge, 3 Bing. 474 Gregory v. Mighell, 18 Ves. 328 Gregory v. Wilson, 9 Hare, 683; 1 Grescott v. Green, 1 Salk. 199 Gresham House Estate Co. v. Ross	1;61	L. J. C	h. 59;	65 L. I	. 797 ;	40	-
W. R. 214	•••	•••	•••	•••	•••	•••	299
Greenwood v. Tyber, Cro. Jac. 563	3	•••	•••	•••	•••	19,	148
Gregg v. Coates, 23 Beav. 33; 2 July	ur. N.	S. 964	•••	•••	•••	•	837
Gregory v. Doidge, 3 Bing. 474	•••	•••	•••	•••	•••	78,	243
Gregory v. Mighell, 18 ves. 828			•••	•••	•••		112
Crescott a Creen 1 Sells 100	lo Jur	. 304	•••	•••	•••	D1U,	911
Greekem House Fetete Co. a. Rossi	 Gold	Mining	·	70 W	N n	110	478
Grescott v. Green, 1 Salk. 199 Gresham House Estate Co. v. Ross Gresham Life Assurance Society Sol. Journ. 624	e GOIG	anger	15 T	T. R.	454	48	410
Sol. Journ. 624							361
Gretton v. Diggles, 4 Taunt. 766 Gretton v. Mees, 7 Ch. D. 839; 38	•••	•••	•••	•••	•••	•••	432
Gretton v. Mees, 7 Ch. D. 839; 38	3 L. T.	506;	26 W.	R. 607	•••		
Greville-Nugent v. Muir Mackenzi	e, 16 '	r. L. Ŕ.	43	•••	•••		52
Grey v. Cuthbertson, 2 Chit. 482	•••	•••	•••	•••	•••	•••	437
Grey v. Friar, 5 Ex. 584; 4 H. L.	C. 56	5; 18 J	u r. 103	6	•••	100,	
Grey de Wilton (Lord) v. Saxon, 6	Ves.	106	•••	•••	•••	•••	378
Greville-Nugent v. Muir Mackenzi Grey v. Cuthbertson, 2 Chit. 482 Grey v. Friar, 5 Ex. 584; 4 H. L. Grey de Wilton (Lord) v. Saxon, 6 Griffin v. Scott, 2 Ld. Raym. 1424 Griffin v. Stanhope, Cro. Jac. 464 Griffin v. Tomkins, 42 L. T. 359; Griffinhoofe v. Daulayz. 4 K. & B.	•••	•••	•••	•••	•••	•••	805
Griffin v. Stanhope, Cro. Jac. 404	;;; T	D 457	•••	•••	•••		185
Griffinhoofe v. Daubuz, 4 E. & B.	44 J.	P. 40/	D 744	. or T	;; ₀	501,	508
						ь.	282
Griffith, Re. 66 L. J. O. B. 763	•••	•••	•••	•••	•••	•••	
287 Griffith, Re, 66 L. J. Q. B. 768 Griffith v. Hodges, 1 C. & P. 419 Griffiths Re, 29 Ch. D. 248: 54 I		•••	•••	•••		•••	237
Griffiths, Re, 29 Ch. D. 248; 54 I	J. C	h. 742 ;	53 L.	T. 262 ;	38 W	R.	
728		•••		•••			9
Griffiths and Morris, Re, '95, 1 Q.	B. 86	6;64L	J. Q.	B. 386	; 72 L	. T.	
290; 43 W. R. 652 Griffiths v. Penson, 8 L. T. 84; 9 Griffiths v. Puleston, 13 M. & W. Griffiths v. Rigby, 1 H. & N. 287; Griffiths v. Tombs, 7 C. & P. 810	··· _	- ::-			•••	•••	550
Griffiths v. Penson, 8 L. T. 84; 9	Jur. 1	1. S. 38	5; 11	W. R. 3	13	•••	133
Griffiths v. Puleston, 13 M. & W.	858;	14 L. J. T. P	Ex. 33	•••	•••	•••	535
Criffish - Wareh 7 C to D 210	20 L	. J. LX.	284	•••	•••	•••	208
Griffiths v. Tombs, 7 C. & P. 810 Grimman v. Legge, 8 B. & C. 324 Grimwood v. Moss, L. R. 7 C. P.	•••	•••	•••	•••	240,	497	400
Grimwood & Moss L. R. 7 C. P.	260 •	41 T	т		240, 97 T.	т°,	200
268; 20 W. R. 972		· ·		27	7. 499.	501.	502
Grissell v. Robinson, 3 Scott, 329;	3 Bi	ng. N. (C. 10	•••		•••	188
Grissell v. Robinson, 3 Scott, 329; Groom v. Bluck, 2 M. & Gr. 567;	10 L.	J. C. P	. 105		•••	•••	412
Groombridge v. Fletcher, 2 Dowl.	353	•••	•••	•••	•••	•••	320
Groombridge v. Fletcher, 2 Dowl. Grosvenor v. Hampstead Junction	Ry. C	ю., 1 De	e G. &c	J. 446	•••	•••	135
Grosvenor v. Skerratt, 28 Beav. 65 Grosvenor Hotel Co. v. Hamilton,	9			. <u></u> .		•••	73
Grosvenor Hotel Co. v. Hamilton,	94, 2	Q. B. 8	336; 6	3 L. J. (չ. B. 6	W1;	405
71 L. T. 362; 42 W. R. 626 Grove, Ex parte, 1 Atk. 104 Grove v. Portal, '02, 1 Ch. 727;	•••	•••	•••	•••	ಶ೪೮,	888,	405
Grove a Down 100 1 Ch 707.	71 T	T 01-	200 .	ert n	QKA .	023,	929
T. L. B. 819	/1 L	. J. UA.	. 200;	00 LL. I	9 27	411	490
Grumbrell e. Roper & R & A 711	•••	•••	•••	•••	ر ۵۰ رس	-11,	27
Grute v. Locroft. Cro. Eliz. 287	• • • •	•••	•••	•••	•••	•••	20
Grymes v. Boweren. 6 Bing. 437:	8 L.	J. (O. 8	.) C. P.	140	•••	525	526
T. L. B. 319		•••	•••	•••	•••	,	137
Grymes v. Peacock, 1 Bulstr. 17 Gudgen v. Besset, 6 R. & B. 986;	26 L.	J. Q. B.	36;3	Jur. N	. 8. 21	2	183

0 111 B 4 111 B1 111						P	AGE
Gulliver v. Burr, 1 W. Bl. 596	•••	•••	•••	•••	•••	•••	466
Gunter v. Halsey, 2 Amb. 586 Guthrie's Settled Estates, Re, '02, Gutteridge v. Munyard, 7 C. & P. Guy v. West, cited 2 Selw. N. P. 1 Gwilliam et Bellen 1 Point 274	1 Ch	040 m	•••	•••	•••	•••	111
Gutteridge v. Munvard. 7 C. & P	1 OH. 199 · 1	Moo l	R 33	ī	•••	336,	45 981
Guy v. West, cited 2 Selw. N. P. 1	244			•	•••		877
Gwilliam v. Barker, 1 Price, 274	•••	•••	•••	•••	•••	•••	818
Gwilliam v. Barker, 1 Price, 274 Gwillim v. Stone, 3 Taunt. 433	•••	··· _	•••	•••	•••	•••	118
Gwinnell v. Eamer, L. R. 10 C. P.	658; 8	32 L. T.	. 835	•••	•••		335
Gwinnell v. Eamer, L. R. 10 C. P. Gwinnet v. Phillips, 3 T. R. 648 Gwynne v. Mainstone, 3 C. & P. 8	٠	•••	•••		•••	273,	
Gwynne v. mainstone, 5 C. & P. 5	02	•••	•••	•••	•••	•••	148
Haberdashers' Co. v. Isaac, 3 Jur.	N. S. 6	311		•••	•••		418
Hackett v. Macnamara, Lloyd & G	. temn.	Plunk	ett. 282	5	•••	•••	60
Haddon v. Arrowsmith, Cro. Eliz. Haig v. Homan, 4 Bli. N. S. 380 Haigh v. Waterman, 16 L. T. 375	461	•••		•••	•••	•••	65
Haig v. Homan, 4 Bli. N. S. 380	•••	•••	•••	•••	•••	•••	482
Haigh v. Waterman, 16 L. T. 375		 		 I N	9 105		351
Haines v. Burnett, 27 Beav. 500;	Z9 Li. J	. Сп. 2	39; 5	Jur. N.	5. 12/	154,	180
Haines v. Welch, L. R. 4 C. P. 91	: 38 T	. J. C.	P. 118	: 19 L	 . T. 42	22:	100
17 W. R. 163						532,	533
Haldane v. Johnson, 8 Ex. 689; 2	2 L. J.	Ex. 26	4; 17 J	Tur. 937	7	••• '	228
Haldane v. Newcomb, 9 L. T. 420	; 12 W	7. R. 18	35	••• _	•••	•••	337
Hale, Ex parte, 1 C. D. 285; 4							007
W. R. 300 Hall, Ex parte, 10 C. D. 615;	48 T.	T BL	70 . 40	 Т. Т	170 .	97	325
W. R. 385	#0 Tr (J. DK.	10; 10	114 1	110,		226
Hall v. Ball. 3 M. & Gr. 242: 10 1	և. J. C	. P. 28	5	•••			187
W. R. 385 Hall v. Ball, 3 M. & Gr. 242; 10 Hall v. Burgess, 5 B. & C. 332; 4 Hall v. Butler, 10 A. & E. 204 Hall v. Chandless, 4 Bing. 123	L. J. ((O. S.)	K. B. 1	72	•••	237,	880
Hall v. Butler, 10 A. & E. 204	•••	•••	•••	•••	•••	•••	77
Hall v. Chandless, 4 Bing. 123							185
9 Jur. N. S. 18 Hall v. Combes, Cro. Eliz. 368 Hall v. Comfort, 18 Q. B. D. 11	•••	•••	•••	•••	•••	199,	199
Hall w. Comfort. 18 O. B. D. 11	: 56 T	. j. o.	B. 185	: 55 T	. T. 55	 50 :	100
35 W. R. 48						•••	575
35 W. R. 48 Hall v. Denbigh, Cro. Eliz. 778 Hall v. Ewin, 37 Ch. D. 74; 57 L.	•••	•••	•••	•••	•••	•••	131
Hall v. Ewin, 37 Ch. D. 74; 57 L.	Մ <u>.</u> Ch. Ձ	5; 57	L. T. 8	31 ; 36	W.R.	84	440
Hall v. Ewin, 37 Ch. D. 74; 57 L. a. Hall v. Lund, 1 H. & C. 676; 32 W. R. 271 Hall v. Sebright, 1 Mod. 14 Hallen v. Runder, 1 C. M. & R. 26 Hallett to Martin, 24 Ch. D. 624; Halliday's Settled Estate, Re, 12 E Hallifax v. Chambers, 4 M. & W. Hamer v. Sharp, 19 Eq. 108 Hamerton v. Stead, 3 B. & C. 478 Hamilton v. Clanricarde, 1 Bro. F Hamilton v. Graham, L. R. H. L. Hamilton v. Vaughan-Sherrin, &c. 795; 71 L. T. 825; 43 W. R. Hammerton v. Honey, 24 W. R. 6	L. J. 1	Ex. 113	; 9 Ju	r. N. 8	. 205;	11	7.40
W. R. 2/1 Hall a Sabright 1 Mod 14	•••	•••	•••	•••	•••	121,	180
Hallen v. Runder, 1 C. M. & R. 26	36	•••	•••	•••	•••	•••	528
Hallett to Martin, 24 Ch. D. 624;	52 L.	J. Ch. 8	804 : 4	8 L. T.	894	52	2, 57
Halliday's Settled Estate, Re, 12 E	q. 199	•••	•••	•••	•••	•••	18
Hallifax v. Chambers, 4 M. & W.	662	•••	•••	•••	•••	•••	368
Hamer v. Sharp, 19 Eq. 108		T'/0	 2 \ 12	 D 90		400	71
Hamilton & Clauricania 1 Rro F	, о <u>п</u> . С 34	J. (U. 1 1	3.) L . 1	D. 00	92,	205,	70
Hamilton v. Graham, L. R. H. L.	2 Sc.	166	•••	•••	•••	•••	145
Hamilton v. Vaughan-Sherrin, &c	., Co.,	1894, 8	Ch. 5	89;68	L. J. (Ch.	
795; 71 L. T. 825; 43 W. R. Hammerton v. Honey, 24 W. R. 6 Hammond v. Bussey, 20 Q. B. D. Hammond v. Farrow, '04, 2 K. B. 2 L. G. R. 817; 68 J. P. 352 Hammond v. Mather, 3 F. & F. 15	126		•••	•••	•••	•••	10
Hammerton v. Honey, 24 W. R. 6	08	··· -	<u>.</u> -	•••	•••	•••	369
Hammond v. Bussey, 20 Q. B. D.	79; 57	/ L. J.	Ų. B. 5 V D 7	8 00.01	 T '02 7	7	418
9 f. G R 217 · 82 f P 259	38Z ; /	э ц. ј.	K. D. /	20 ; 91	L. I. 1	7;	384
Hammond v. Mather. 3 F. & F. 15	1	•••	•••	•••	•••	•••	498
26 W.R. 491 Hanbury v. Cundy, 58 L. T. 155 Huncock v. Austin, 14 C. B. N. 8 N. S. 77; 8 L. T. 429; 11 W Hancock v. Caffyn, 8 Bing, 358	•••	•••	•••	154	, 155,	156,	169
Hanbury v. Cundy, 58 L. T. 155		•••	••• ~		···	228,	365
Hancock v. Austin, 14 C. B. N. S	s. 634	; 32 L	. J. C.	P. 252	; 10 J	ur.	00.
N. S. 77; S L. T. 429; 11 W	. K. 83	J	•••	85, 87	, 219,	283,	204
Hancock v. Caffyn, 8 Bing. 358 Hand v. Blow, '01, 2 Ch. 721; 7							89 8
							416
W. K. 3 Hand v. Hall. 2 Ex. D. 355: 46 L	. J. Ex	. 603 :	25 W.	R. 734	•••		124

						P	AGE
Handcock v. Foulkes, 9 M. & W	. 481;	11 L. J	Ex. 3	81	•••	•••	316
Handcock v. Foulkes, 9 M. & W Handman and Wilcox's Contrac	t, Re, '(02, 1 C	h. 599 ;	71 L.	J. Ch.	263;	
86 L. T. 246	•••		•••	•••	•••	43	, 53
Hanmer v. Clifton, '94, 1 Q. B. Hanmer v. King, 57 L. T. 367 Hanslip v. Padwick, 5 Ex. 615; Hanson v. Boothman, 13 East, 2 Harbin v. Barton, Moore, 395 Harbin v. Chard, Poph. 96 Harcourt v. Wyman, 3 Ex. 817 Harding v. Crethorn, 1 Esp. 57 Harding v. Hall, 14 L. T. 410; Harding v. Preece, 9 Q. B. D. 28 31 W. R. 42	2381; 4	2 W. R	. 287	•••	•••	•••	574
Hanmer v. King, 57 L. T. 367	•••	•••	•••	•••	•••	•••	
Hanslip v. Padwick, 5 Ex. 615;	19 L.	J. Ex. 3	372	•••	•••	•••	116
Hanson v. Boothman, 13 East, 2	22	•••	•••	•••	•••	208,	
Harbin v. Barton, Moore, 395	•••	•••	•••	•••	•••	•••	20
Harbin v. Chard, Poph. 96	. : : :	- :::		•••	•••	 19,	20
Harcourt v. Wyman, 3 Ex. 817	; 18 L.	J. Ex.	453	•••	•••	19,	567
Harding v. Crethorn, 1 Esp. 57			•••	•••	•••	491,	204
Harding v. Hall, 14 L. T. 410;	14 W.	K. 646		- ···· . -	· · · · ·		307
Harding v. Preece, 9 Q. B. D. 28	31; 51	L. J. (Į. В. 5	15;47	L. T.	100;	
TT 11 TIVI OD 4 O 60						100	457
Harding v. Wilson, 2 B. & C. 96 Hardwick v. Hardwick, 16 Eq. 1			a			137,	
Hardwick v. Hardwick, 16 Eq. 1	108; 42	14 J. 1	Un. 636	; 21 \	V. K. 7	19	133
Hardy v. Fothergill, 13 App. Ca	8. 851 ;	98 T.1	. Q. B.	44; 58	L. 1.	2/8;	
37 W. R. 177 Hardy v. Martin, 1 Cox, 26 Hare v. Burges, 4 K. & J. 45; 2	•••	•••	•••	•••	•••	329,	443
Hardy v. Martin, 1 Cox, 20	~ T"T	CIL O	•••	•••	•••	•••	228
Hare v. Durges, 4 A. & J. 40; 2	/ L.J.	T T O	1) 10	7 . 40	T ''		101
Hare v. Burges, 4 R. & J. 45; 2 Hare v. Elms, '93, 1 Q. B. 60 41 W. R. 297 Hare v. Groves, 3 Anst. 687 Hare v. Horton, 5 B. & Ad. 715 Hargrave's Case, 5 Rep. 31 a Hargrave v. Shewin, 6 B. & C. 3 Harley v. King, 2 Cr. M. & R. 1 Harman v. Ainelia '03 2 K. R.	4; 02	11. J. Q	. р. 18	1; 00	ш. т.	220 ;	K1Λ
Home Crown 9 And 607	•••	•••	•••	•••	•••	154	910
Tame a Howton & D & Ad 715	•••	•••	•••	•••	•••	104,	141
Harmana's Case & Dan 91	•••	•••	•••	•••	•••	•••	141
Harmana a Chamin & D & C		•••	•••	•••	•••	•••	150
Harland Ving O.C. W. & D. 7	0	•••	•••	•••	•••	•••	190
Harmon a Ainelia 109 O V D	041 - 1	N4 "1 17	D 40	0.70	T "T L	7 0	412
E00 . 70 This E00 . COT 7	770	00 71	2 004.	EO 317	D 815	. 00	
T T D 952	. 110;	80 1 0W	. 024,	JZ 11.	171	988	40R
Uermann a Powell and I o	D 400	. er t	T 055	•••	1/1	, , ,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	944
Harman Boan 3 C & V 907	D. 020	, 00 L.	1. 200	•••	•••	101	448
T. L. R. 356 Harmann v. Powell, 60 L. J. Q. Harmer v. Bean, 3 C. & K. 307 Harnett v. Maitland, 16 M. & W. Harnett v. Yeilding, 2 Sch. & Le Harper r. Taswell, 6 C. & P. 166 Harpur's Cycle Fittings Co., J. 83 L. T. 407	957	•••	•••	•••	•••	101,	250
Hemett a Vailding 9 Sch & L	. 201 of K40 :	OR E	9 08	•••	K.4	118	110
Harner & Teawell & C & P 166	1. 010 ,	0 16. 1	. 00	•••	01	, 110,	301
Harnur's Cycle Fittings Co	'' ''	2 Ch	791 - 6	10 T. J	Ch :	R41 ·	001
83 T. T 407	•0, 00,	2 0	,,,	. 23. 0		327	328
83 L. T. 407 Harries v. Bryant, 4 Russ. 89 Harrington v. Wise, Cro. Eliz. 4							167
Harrington v. Wise. Cro. Eliz. 4	86 : 21	Rol. Ab	r. 450		80, 150	. 151.	495
Harrington v. Wise, Cro. Eliz. 4 Harris, Ex parte, 16 Q. B. D. 1 34 W. R. 132	30: 55	L J.	M. C. 2	24 : 58	L. T.	655 :	
184 W. R. 182 Harris v. Booker, 4 Bing. 96 Harris v. Booker, 4 Bing. 96 708; 52 W. R. 668; 20 T. Harris v. Evans. 1 Wils. 262: A						•••	270
Harris v. Booker, 4 Bing, 96	•••	•••	•••	•••	•••	•••	330
Harris v. Boots, Cash Chemists (Souther	rn), '04.	2 Ch.	376:7	3 L. J.	Ch.	
708; 52 W. R. 668; 20 T.	L. R. 6	28	•••	•••	•••	•••	442
Harris v. Boots, Cash Chemists (708; 52 W. R. 668; 20 T. Harris v. Evans, 1 Wils. 262; A Harris v. Hickman, '04, 1 K. E 68 J. P. 65; 2 L. G. R. 1; Harris v. James, 45 L. J. Q. B. Harris v. Jones, 1 Moo. & R. 173 Harris v. Morrice, 10 M. & W. 2 Harris v. Ryding, 5 M. & W. 60 Harris v. Shipway, Bull. N. P. Harris v. Thirkell, 20 L. T. O. S Harrison, Exparte, 13 Q. B. D. 7	mb. 32	9	•••	•••	•••		148
Harris v. Hickman, '04, 1 K. H	3. 13 ; 7	3 L. J.	K. B. 8	31;89	L. T.	722 ;	
68 J. P. 65; 2 L. G. R. 1;	20 T. L	. R. 18	•••	•••	•••	383,	394
Harris v. James, 45 L. J. Q. B.	545; 35	5 L. T.	240	•••	•••	335,	336
Harris v. Jones, 1 Moo. & R. 178	3	•••	•••	•••	•••	•••	336
Harris v. Morrice, 10 M. & W. 2	60; 12	L. J. E	x. 43	•••	•••	•••	2
Harris v. Ryding, 5 M. & W. 60	•••	•••	• • •	•••	•••	•••	144
Harris v. Shipway, Bull. N. P.	182	•••	•••	•••	•••	•••	242
Harris v. Thirkell, 20 L. T. O. S.	. 9 8	•••	•••	•••	•••		271
Harrison, Ex parte, 13 Q. B. D. 7	53;58	L. J. Cb	. 977 ;	51 L. I	r. 878	324,	326
Harrison, Exparte, 13 Q. B. D. 7 Harrison v. Barnby, 5 T. R. 246 Harrison v. Barry, 7 Price, 690 Harrison v. Blackburn, 17 C. B. Harrison v. Good, 11 Eq. 338	•••	•••	•••	•••	•••	226,	256
Harrison v. Barry, 7 Price, 690	•••				249	, 305,	318
Harrison v. Blackburn, 17 C. B.	N. S. 6	78 ; 3 4	L. J. C). P. 10	<u> </u>	192,	433
Harrison v. Good, 11 Eq. 338	; 40	L. J. C	Ն. 294	; 24	L. T. 2	:63 ;	
19 W. R. 846	•••	•••	•••	•••	•••	•••	901
Harrison v. Malet, 3 T. L. R. 58	•••	•••	•••	•••	•••		356
Harrison v. North, 1 Cas. in Cha	n. 83	•••	•••	•••	•••	5	
Harrison v. Wardle, 5 B. & Ad.	146	•••	•••		•••		311
19 W. R. 346 Harrison v. Malet, 3 T. L. R. 58 Harrison v. North, 1 Cas. in Cha Harrison v. Wardle, 5 B. & Ad. Harrison, And W. B. Co. v. Corpo	ration	oi Bar	row-in-	r urnes	a, 63 L	. 1.	
834; 39 W. R. 250	•••	•••	•••	•••	•••	•••	424

						_ P	AGE
Harrison, Ainslie & Co. v. Muncas	ter, '9	1, 2 Q.	В. 680	; 61 L	. J. Q.	B.	400
102; 65 L. T. 481; 40 W. R. Harrow School v. Alderton, 2 B. & Harslet v. Butcher, Cro. Jac. 644 Hart v. Hart, 18 C. D. 670	P. 86	•••	•••	•••	•••	400,	353
Harslet v. Butcher, Cro. Jac. 644		•••	•••		•••		342
Hart v. Hart, 18 C. D. 670	•••		•••	•••	•••	119,	155
LIBERT V. LICACII, I MI. & W. DOU	•••			• • •	• • •	•••	307
Hart v. Porthgain Harbour Co., '0 L. T. 841; 51 W. R. 461	8, 1 (n. 680	; 72 L	. J. Ch	. 426;		81
Hart v. Windsor, 12 M. & W. 68;	18 L.	J. Ex.	129: 8	Jur. 1	50	:	
•			, -			854,	
Hartcup & Co. v. Bell, C. & E. 19	•••		•••	•••	•••	68,	242
Hartley v. Hudson, 4 C. P. D. 36	7;48	L. J. C	. P. 75	l	···	390,	395
Hartley v. Maddocks, '99, 2 Ch. 19	99; O	ш. Ј. ч	Cn. 490		. 1. 70		239
Hartshorne v. Watson, 4 Bing. N.	. C. 17	8 : 2 Jı	ır. 155	•••		•••	496
Harvey v. Barnard's Inn. 50 L. J.	Ch. 7	50 ; 45]	L. T. 28	30; 29 ³	W. R. 9	922	105
Harvey v. Brydges, 14 M. & W. 4	87	•••	•••	•••	•••	::-	570
Harvey v. Copeland, 30 L. R. Ir.	412	•••	•••	•••	•••	467,	470 106
Harvey v. Harvey 2 Str. 1141	•••	•••	•••	•••	•••	•••	
Harvey v. Oswald, Cro. Eliz. 553,	572		•••		•••	•••	500
Harvey v. Pocock, 11 M. & W. 74	0;12	L. J. E	x. 484	•••	•••	313,	314
Harvey v. Copeland, 30 L. R. Ir. Harvey v. Grabham, 5 A. & E. 61 Harvey v. Harvey, 2 Str. 1141 Harvey v. Oswald, Cro. Eliz. 553, Harvey v. Pocack, 11 M. & W. 74 Harvy v. Thomas, Cro. Eliz. 216 Haeler v. Lemoyne, 5 C. B. N. S.			_D				19
1279	. 580 ;	28 L. J	. C. P.	108;4.	Jur. N	. හ. ඉදා	989
Hassard v. Clark, 13 L. R. Ir. 391	•••	•••	•••	•••	•••	281,	409
Hasties and Crawfurd, Re, 86 W.	R. 57	2	•••		•••		190
Hastings, Re. 6 Ch. D. 610			•••	•••	··· -	···	242
Hastings (Lord) v. North Eastern 812: 47 W. R. 59; affirmed	Ry.	Co., '9	8, 2 Ch	. 674;	78 L.	T.	
L 1 21/ And in H L 181	A (:	700 .	n 1 .	K X7:	.	445,	418
L. T. 217; and in H. L., '00, Hastings (Lord) v. Saddler, 79 L. ' Hastings (Mayor of) v. Thorley, 8 Hatch v. Hale, 15 Q. B. 10; 19 L.	r. 355				,		565
						•••	299
Hastings (Mayor of) v. Thorley, 8 Hatch v. Hale, 15 Q. B. 10; 19 L.	. J. Q.	B. 289	; 14 J	ır. 459	•••	283,	298
Hatten r. Russell, 38 Ch. D. 334; W. R. 317	57 L	J. Ch.	425;	98 L. T	. 271;	36	44
Haven Gold Mining Co., Re. L. R.	. 20 E	a. 151:	51 L.	J. Ch	 . 242 :	46	77
Haven Gold Mining Co., Re, L. R L. T. 322; 80 W. R. 389							215
Havens v. Middleton, 10 Hare, 64	1; 22	L. J. C	h. 746	; 17 Ju	r. 271	•••	381
Hawkes v. Orton, 5 A. & E. 867	 Œ 00		r 'm *		•••	•••	404
Hawkesworth v. Chaffey, 55 L. J. Hawkins v. Carbines, 27 L. J. Ex.	On. 38	10; 04.	L. 1. /	2	•••	•••	105 140
Hawkins v. Rutt, Peake, N. P. C.	186	•••	•••	•••	•••	•••	243
Hawkins v. Rutt, Peake, N. P. C. Hawkins v. Sherman, 3 C. & P. 45 Hawkins v. Walrond, 1 C. P. D. 2	9	•••	•••	•••	•••	431,	
Hawkins v. Walrond, 1 C. P. D.	280;4	5 L. J	. C. P	. 772;	35 L.	Т.	
210; 24 W. R. 824	•••	•••				803,	375 122
Hawkins v. Warre, 3 B. & C. 690 Hawkins v. Williams, 10 W. R. 6	92	•••	•••	•••	•••	•••	451
Hawksland v. Gatchel, Cro. Eliz.	835	•••	•••	•••	•••		183
Hawksland v. Gatchel, Cro. Eliz. Hawtry v. Butlin, L. R. 8 Q. B.	290; 4	2 L. J.	. Q. B	. 163;	28 L.	T.	
582; 21 W. R. 633	•••			•••		•••	521
Hayes v. Bickerstaff, Vaughan, 11 Hayling v. Okey, 8 Ex. 531	ð	•••	•••	•••	•••	•••	399 532
Hayne v. Cummings, 16 C. B.	N. S.	421; 1	0 Jur.	N. S.	778;	10	
L. T. 341					125.	153.	169
Haynes r. King, '93, 8 Ch. 439;	33 L.	J. Ch.	21; 6	9 L. T.	. 855 ;	42	7./^
W. R. 56 Haytor Granite Co., Re, 1 Ch. 77	 95 T	I Ch	154	 19 In-	o	;··	140
13 L. T. 515; 14 W. R. 186	, оо ц	. <i>.</i>			м. ъ.		329
Hayward v. Haswell, 6 A. & E. 26	5; 1 3	Jur. 54	•••	•••	•••	•••	79
Hayward v. Parke, 16 C. B. 29	5; 24	L. J. (C. P. 2	17;1.	Jur. N		***
781	 !aai-4		iii 40			416,	417
Haywood v. Brunswick Building S 73; 45 L. T. 699; 30 W. R.	ociety 999	. o y. B	. D. 40		Ų	. Д.	433
10, 20 TU TI 000 , 00 41 · TW		•••	•••	•••	•••	•••	200

						Ð	AGE
Haywood v. Cope, 25 Beav. 140	; 27 L.	J. Ch.	468	•••	109	. 201.	204
Haywood v. Silber, 30 Ch. D. 4	04;54]	L. T. 10	8; 34	W. R.	114	•••	414
Hazeldine v. Heaton, C. & E. 4		0 . E4 1		71. goe		250,	415
Huzle's Settled Estate, Re, 29 C 947; 33 W. R. 759	R. D. 7	0;04:1	L. J. ()Ц. 0Z6	, 52 L	. 1.	47
Heap v. Barton, 12 C. B. 274;	21 L. J.	C. P. 1	58: 1	6 Jur. 8	91	527,	
Heap v. Hartley, 42 Ch. D. 461	;58 L.	. J. Ch.	790;	61 L.	Г. 538	; 38	
W. R. 136 Heard v. Pilley, 4 Ch. 548;		T (1)			m	•••	87
W. R. 750	38 L.	J. Ch.	718;	21 L.	1. 68	; 17 70,	110
Hearle v. Greenbank. 3 Atk. 71	1	•••	•••	•••	•••	,,,	15
Hearn v. Allen, Cro. Cas. 57	•••	•••	•••	•••	•••	•••	136
Hearle v. Greenbank, 3 Atk. 71 Hearn v. Allen, Cro. Cas. 57 Hearn v. Tomlin, Peake, N. P. Heawood v. Bone, 13 Q. B. D.	C. 192		···			•••	92
Heawood v. Bone, 13 Q. B. D. 1	179; 51	1. T. 1	25;3	2 W. R	. 752	•••	269
Heckman v. Isaac, 6 L. T. 383 Hefford v. Alger, 1 Taunt. 218 Hegan v. Johnson, 2 Taunt. 148 Hegarty v. Milue, 14 C. B. 627 Helier v. Casebert (or Casbard), Hellard v. Bewes, Re. '96, 2 Ch. Hellard v. Eastwood, 6 Ex. 28 Helling v. Lumley 3 De G. &	•••	•••	•••	•••	•••	•••	900 910
Hegan v. Johnson, 2 Taunt, 148	3	•••	•••	•••	•••	219.	247
Hegarty v. Milne, 14 C. B. 627	•••	•••	•••	•••	•••		122
Helier v. Casebert (or Casbard),	1 Lev.	127;1	Sid. 20	86	151	, 452,	454
Hellard v. Bewes, Rc, '96, 2 Ch.	229	· · · · ·	•••	•••	***		190
Hellawell v. Lastwood, v Ex. 28	90; 20 I	J. J. E.X 99 T. 1	. 154	940 . K	297	, 518,	210
901 · 7 W P 169	,			, _			110
Hemming v. Brabazon, O. Bridg Hemingway v. Fernandes, 13 Si Henchett v. Kimpson, 2 Wils. Henderson v. Hay, 3 Bro. C. C. Henderson v. Mears, 28 L. J.	g. Rep. (by Ban	nister)	1		•••	23
Hemingway v. Fernandes, 13 S	im. 228	٠	••• ′	•••	•••	•••	436
Henchett v. Kimpson, 2 Wils.	140	•••	•••	•••	•••	•••	319
Henderson v. Hay, 3 Bro. C. C.	632	AF	T 3Y		154	, 155,	156
554	Q. B. 3	05;5.	ur. N	. 8. 70); 7 W	. K.	287
Henderson v. Squire, L. R. 4 Q). B. 170	· 88 T	. j. o	B. 78	: 19 T	4. T.	201
601 ; 17 W. R. 519							564
601; 17 W. R. 519 Henderson v. Thorn, '93, 2 Q.	B. 164	; 62 L.	J. Q.	B. 586	; 69 L	T.	
430; 41 W. R. 509		•••	•••			•••	846
Henson v. Coope, 3 Sc. N. R. 4	8	•••	•••	•••	•••	•••	127
Henstead's Case, 5 Rep. 10 a Henthorn v. Fraser, '92, 2 Ch.				· RR T.	T 480	. 40	63
W. R. 483							104
Herbage Rents, Greenwich, Re.	'96, 2	Ch. 81	1;65	L. J. C	h. 871	; 75	
L. T. 148; 45 W. R. 74 Herlakenden's Case, 4 Rep. 62 Herno v. Benbow, 4 Taunt. 76	•••	•••	•••	•••	•••	•••	331
Herlakenden's Case, 4 Rep. 62	a	•••	•••	•••	•••	379,	
							851
879: 89 L. T. 422: 52 W.	. R. 183	00, Z R	D. U	100 ; 12	ш. у. г	1. D.	162
Hersey v. Giblett, 18 Beav. 17	4:23 L	. J. Ch.	818	•••	•••	•••	100
Hersey v. White, 9 T. L. R. 83	5	•••	•••	•••	•••	•••	88
Hewitt v. Isham, 7 Ex. 77; 21	L. J. E	x. 35	•••	•••	•••	•••	144
879; 89 L. T. 422; 52 W. Hersey v. Giblett, 18 Beav. 17: Hersey v. White, 9 T. L. R. 38 Hewitt v. Isham, 7 Ex. 77; 21 Hewlins v. Shippam, 5 B. & C. Hewson v. South Western Ry. Hext v. Gill, 7 Ch. 699; 41 L. 957	221	V D 4	•••	•••	•••	•••	126
Hart a Gill 7 Ch 800 · A1 I.	J Ch	781 ·	97 î.	Т 201	· 90 W	, ii	135
							200
Hexter v. Pearce, '00, 1 Ch. 34	1;69 I	. J. Ch	. 14R ·	· 82 f.	ጥ ነበር	· 48	
W. R. 330 Hey v. Moorhouse, 6 Bing. N. Hey v. Wyche, 12 L. J. Q. B. Heys v. Tindall, 1 B. & S. 29		•••	•••	•••	•••	117	, 119
Hey v. Moorhouse, 6 Bing. N.	C. 52		•••	•••	•••	•••	564
Hey r. Wyche, 12 L. J. Q. B.	88; 6 J	ur. 559	D 94	о т	T 40		381
W. R. 664	, ou i	⊔. v. Ų.	D. 90	t	. 1. 40	, y	71
W. R. 664 Hicks r. Cooke, 4 Dow, 16 Hickley and Steward, Re. 54 L	•••	•••	•••	•••	•••	•••	71 73
Hickley and Steward, lie. 54 L	. J. Ch.	608;5	2 L. T	. 89; 8	3 W. F	L 320	189
Hickman v. Isaacs, 4 L. T. N.	8. 285	<u>-</u>			•••	•••	361
Hickman v. Isaacs, 4 L. T. N. Hickman v. Mechin, 4 H. & N Hicks v. Downing, 1 Ld. Rayn	. 716;	28 L. J.	Kx. 3	10	•••	604	225
Hicks v. Downing, 1 Ld. Rayn Higginshaw Mills Co., Re, '96,	ያርሌ ፣	 41 . RK	T. "T	Ch 57	 . 78	_ ฮฮฮ เ. T	, 415
	2 Cu. 0			CD. 111	32	6. 327	328
5; 45 W. R. 56 Higgs v. Scott, 7 C. B. 63				•••		•, •	224

						P	AGE
Highett and Bird's Contract, Re, '02 Ch. 508; 72 Ibid. 220; 87 L. T. Highgate School (Wardens, &c., of)	, 2 Ch	. 214; 97:50	'03, 1 C W. R. 4	h. 287 124 : 51	; 71 L	J.	119
Highgate School (Wardens, &c., of)	v. Sew	ell, '98	, 2 Q. 1	B. 254	62 L	J.	
Q. B. 476; 69 L. T. 118; 41 Highgate School (Wardens, &c., of)	v. Sev	vell, '9	 4, 2 Q.	B. 906	; 63 L	. j.	506
Q B. 820; 71 L. T. 88 Hillary v. Gay, 6 C. & P. 284 Hill v. Barclay, 16 Ves. 402 Hill v. Barclay, 18 Ves. 56	•••	•••	•••	•••	•••	506, 569,	
Hill v. Barclay, 16 Ves. 402	•••	•••	•••	•••	•••	•••	346
Hill (Viscount) v. Bullock, '97, 2 C	h. 482	; 66 L	 J. Ch	 . 705 ;	 77 L.	510, T.	511
240; 46 W. R. 84 Hill a Keet and West India Dock	 Co o	 Ann (``oo 44	 R . KQ	;;; _T	 ?Ь	515
842; 51 L. T. 163; 32 W. R. Hill v. Edward, C. & E. 481 Hill v. Grange, Plowd. 164 Hill v. Hickin, '97, 2 Ch. 579 Hill v. Kempshall, 7 C. B. 975 Hill v. Patton, 8 East, 373 Hill v. Ramm, 5 M. & Gr. 789	925					ш,	
Hill v. Edward, C. & E. 481 Hill v. Grange, Plowd. 164	•••	•••	•••	•••	•••	 151,	
Hill v. Hickin, '97, 2 Ch. 579	•••	•••	•••	•••	•••	•••	63
Hill v. Patton, 8 East, 878	•••	•••	•••	•••	•••	•••	
Hill v. Ramm, 5 M. & Gr. 789 Hill v. Saunders, 2 Bing. 112; 4 B	. C	 590 · .	 4 T. T	 // 8 ·		•••	175.
						238,	77, 255
Hills v. Rowland, 4 D. M. & G. 430 Hills v. Street. 5 Bing. 37); 22 1	L. J. C	h. 964	•••	•••	•••	371 305
Hilton v. Goodhind, 2 C. & P. 591	•••	•••	•••	•••	•••	:::	227
Hills v. Street, 5 Bing. 37 Hilton v. Goodhind, 2 C. & P. 591 Hilton v. Green, 2 F. & F. 821 Hilton v. Tipper, 18 L. T. 626; 16 Hincheliffe v. Kinnoul, 5 Bing. N. Hinde v. Gray, 1 M. & Gr. 195; 9 1 Hindle v. Blades, 5 Taunt. 225	w. r.	888	•••	•••	•••	410, 	411 425
Hincheliffe v. Kinnoul, 5 Bing. N.	C. 1 L. J. C	 ! P 95	 3 · 4 J	 nr 900	•••	 163,	137
Hindle v. Blades, 5 Taunt. 225					•••		311
Hindle v. Blades, 5 Taunt. 225 Hindle v. Pollitt, 6 M. & W. 529 Hindley v. Emery, 1 Eq. 52; 35	 L. J. C	 2h. 6 :	 11 Jur	 . N. S.	 874 :	 13	373
L. T. 272; 14 W. K. 25 Hirst v. Horn, 6 M. & W. 393 Hitchcock v. Coker, 6 A. & E. 438 Hitchings v. Thompson, 5 Ex. 50; Hoare v. Chambers, 11 T. L. R. 188	•••	•••	•••	•••	•••		858
Hitchcock v. Coker, 6 A. & E. 438	··•	•••	•••	•••	•••	566, 	567 357
Hitchings v. Thompson, 5 Ex. 50;	19 L.	J. Ex.	146	•••	•••	 113,	244
Hoods & Co. v. Hudson, 20 Q. 1	3. D.	232;	59 L. J	. Q. B.	562;	03	
L. T. 215; 38 W. R. 682 Hobson v. Gorringe, '97, 1 Ch. 182	; 66	 L. J. С	 h. 114	 ; 75 L	 . T. 61	0 :	275
AS W D SKR						E 1 4	522
Hoby v. Roebuck, 7 Taunt. 157				•••	•••	•••	219
Hobson v. Tulloch, '98, 1 Ch. 424; Hoby v. Roebuck, 7 Taunt. 157 Hodges v. Lawrance, 18 J. P. 347 Hodges v. Newcomen, cited 5 Rep.	15	•••	•••	•••	134,	270,	489 94
HANGERINGON & CROWN IV NO DVI	111 L:N	877.	44 1.	1 ('b	vyu a	Μ.	
33 L. T. 122, 388; 23 W. R. 8 Hodgson v. East India Co., 8 T. R. Hodgson v. Gascoigne, 5 B. & A. 88	278	•••		, 197 	, 108, 	169,	207 288
Hodgson v. Gascoigne, 5 B. & A. 88 Hodgson v. Hooper, 3 E. & E. 149;	29 T.	J. O.	 B. 22	 2 · A .I	 nr N	 g	31,7
911; 3 L. T. 149; 8 W. R. 63; Hodgson v. Moulson, 18 C. B. N. S	7	•••					571
Hodson v. Houland, '96, 2 Ch. 428	. 332 ; 65]	 L. J. С	 h. 754	 ; 74 L	 . T. 81	1:	210
44 W. R. 684 Hodson v. Sharpe, 10 East, 350	•••	 	•••	•••	•••		118
Hodson (or Hudson) v. Walker, L.	R. 7 1	Ex. 55	; 41 1	J. E:	 c. 51 ;	25	186
L. T. 937; 20 W. R. 489 Hogarth v. Jennings, '92, 1 Q. B.	 907 : <i>6</i>	 31 L. J	 . Q. B	 . 601 :	 66 L	т.	577
821; 40 W. R. 517 Hogan v. Hand, 14 Moo. P. C. 810	, T	т как				•••	281
Hogg v. Brooks, 15 Q. B. D. 256				. R. 0/ 	8 	•••	464 478
77 00 17 1 0 17 0 10	•••	•••		•••	•••	•••	148
Hoggart v. Scott, 1 R. & M. 293	•••	•••	•••	•••	•••	•••	128 118
Holcombe v. Hewson, 2 Camp. 891	•••	•••	•••	•••	d	•••	365
4141					a		

Holder m Coates M & N 110						1	378
Holder v. Coates, M. & M. 112 Holder v. Soulby, 8 C. B. N. S. 2 Holder v. Taylor, Hob. 12 Holding V. Pigott, 7 Bing. 465	 54 · 99	1. 1	C P 2	48	•••	•••	89
Holder v. Taylor, Hob. 12		12. 0. 1			•••	•••	404
Holding v. Pigott, 7 Bing, 465		•••	•••			534	535
mole v. Charu Union, 94, 1 Un. 2	93: OJ	LL. J. 1	Un. 408): /U 1	. T. 5	2	405
Holford v. Acton District Council	, '98, 2	Ch. 24	0;78	L. T. 8	29	•••	489
Holford v. Hatch, 1 Dougl, 183						•••	415
Holgate v. Kay, 1 C. & K. 341 Holland, Re, '02, 2 Ch. 360; 7	•••	•••	•••	•••	•••	•••	239
Holland, Re, '02, 2 Ch. 360; 7	1 L. J	. Ch.	518; 8	6 L. I	. 542;	50	
W. R. 573; 9 Manson, 259 Holland v. Bird, 10 Bing, 15	•••	•••	•••	•••	•••	•••	107
Holland v. Cole, 1 H. & C. 67; 3:		F 4		N	 9 10	283,	298
A T. T 503 · 10 W P 583	L 11. J.	EX. 4	01; 0	Jul. M	. 6. 10		421
6 L. T. 503; 10 W. R. 563 Holland v. Eyre, 2 S. & S. 194	•••	•••	•••	•••	•••	•••	108
	900.	41 To.	J. C. 1	P. 146 :	26 L	Т.	
709 : 20 W. R. 990		257	513. 5	15. 51	6. 517.	518.	521
Holland v. Kensington Vestry, L.	R. 2 C	. P. 56	5; 86	L. J. 1	I. C. 1	05;	
17 L. T. 78; 15 W. R. 1045	•••	•••	•••	•••	•••	•••	81
Holland v. Palser, 2 Stark. 161	•••	•••	•••	•••	•••	•••	151
Hollis v. Carr, 2 Mod. 87		•••		•••		<u></u>	158
709; 20 W. R. 990 Holland v. Kensington Vestry, L. 17 L. T. 78; 15 W. R. 1045 Holland v. Palser, 2 Stark. 161 Hollis v. Carr, 2 Mod. 87 Holloway Brothers v. Hill, '02, 2	Ch. 61	2; 71	L. J. C	h. 818	; 87 L.	Т.	400
77 11 27 27 27 27 27		•••	•••	00	·, •••,	σ.,	101
Holloway v. York, 25 W. R. 627 Holme v. Brunskill, 3 Q. B. D. 49	5 . 47	r c	 P 81	0 . 98	T. T.	888	3,
Holme V. Diunskin, O Q. D. D. 48	J , 11	₽. 0. 4	, D. OI	.0,00	11. 1.	406,	
Holmes v. Blogg, 8 Taunt. 35, 508	3					-	10
Holmes v. Blogg, 8 Taunt. 35, 508 Holmes and Formby, Re, '95, 1 of L. T. 842; 43 W. R. 205	Q. B.	174: 6	4 L. J	, Q. B	. 391 ;	71	
L. T. 842; 43 W. R. 205	•		•••			•••	547
Holt & Co. v. Collyer, 16 C. D. 71	8;50	L. J. (Ch. 811	; 44 J	L. T. 2	14;	
29 W. R. 502							360
Holtzapffel v. Baker, 18 Ves. 115	•••	•••	•••	•••	•••	•••	285
Holtzapffel v. Baker, 18 Ves. 115 Homan v. Moore, 4 Price, 5 Home and Colonial Stores v. Todd Homes v. Pearce, 1 F. & F. 283 Honeycomb v. Waldron, 2 Str. 10 Honeyman v. Marryatt, 6 H. L. C		 /D	•••	•••	•••	•••	75
Homes & Pearso 1 F & F 982	, оз т.	1. 829	•••	•••	•••	•••	389 180
Honeycomb a Waldron 9 Str 10	 R4	•••	•••	•••	•••	•••	186
Honeyman v. Marryatt & H. I.	119 •	29 T	Ch. 6	19 • 4	Jur. N	. S .	100
17; affirming 21 Beav. 14; 3	W. R.	. 502			•••	•••	105
Honywood v. Honywood, 18 Eq. 3	06	•••	•••	•••	•••	349,	
Hood (Lord) v. Kendall, 17 C. B.	260	•••	•••	•••	•••	370,	
Hooper, Ex parte, 19 Ves. 477	•••	•••	•••	•••	•••	•••	112
Honywood v. Honywood, 18 Eq. 3 Hood (Lord) v. Kendall, 17 C. B. Hooper, Ex parts, 19 Ves. 477 Hooper v. Brodrick, 11 Sim. 47 Hooper v. Clark, L. R. 2 Q. B. 20			·· <u>·</u>		·· <u>·</u>	•••	364
Hooper v. Clark, L. R. 2 Q. B. 20	0;36	L. J. Ç). В. 79	; 16 1	J. T. 18	52;	
15 W. R. 347	•••	•••	2	113, 214	1, 434,	435,	440
15 W. R. 347 Hoperaft v. Keys, 9 Bing. 613 Hope v. Atkins, 1 Price, 143	•••	•••	•••	•••	•••	11,	197
Hope v. Hope, 1892, 2 Ch. 336;	RI T.	J Ch	441 . 6	36 T. T	522 .	40	141
W. R. 522							15
Hopkins v. Grazebrook, 6 B. & C.	31	•••	•••		•••		
Hopkins v. Grazebrook, 6 B. & C. Hopkins v. Helmore, 8 A. & E. 46 Hopkinson v. Lovering, 11 Q. B. 1	3; 2 J	ur. 856	•••	•••	151,	220,	222
Hopkinson v. Lovering, 11 Q. B. I	D. 92;	52 L. J	r. Q. B.	891	•••	440,	455
Honwood v. Dareloot, 11 Mod. 23/							300
Hopwood v. Whaley, 6 C. B. 744	; 18 L	J. C. 1	?. 43 ;]	l2 Jur.	1088	•••	453
Horn v. Baker, 9 East, 215	707 . 4		 OF 15		···	70.	514
Horn and Francis, Re, '96, 2 Ch. '45 W. R. 72	191; 6	о ы. J.	On. 15	, /5 1	. 1. 3	υ:	190
Hornby v. Cardwell, 8 Q. B. D. 32	29 - 51	T. T () R 20	 . 45 1	 T 75	 (1 ·	190
30 W. R. 263							418
Horne's Settled Estate, Re, 89 Ch	. D. 84	: 57 L	. J. Ch	. 790 :	59 L.	T.	
580 : 37 W. R. 69	•••	• • •				4, 47	, 48
580; 37 W. R. 69 Horne v. Lewin, 1 Ld. Raym. 639 Horneby v. Clifton, Dyer, 264 a	•••	•••				•••	283
Horneby v. Clifton, Dyer, 264 a	•••	•••	•••			•••	141
Horne v. Lewin, 1 Ld. Raym. 639 Horneby v. Clifton, Dyer, 264 a Horner v. Franklin, 20 T. L. R. 75 Horner v. Graves, 7 Birg. 735 Hornidge v. Wilson, 11 A. & E. 6	91		•••			-	
Hornidge w Wilson 11 A 5 F 6		•••	•••	•••	•••		357
Hornidge v. Wilson, 11 A. & E. 6	±0	•••	•••	•••	•••	•••	453

					_	
Horsefell n Davy 1 Stark 160						273
Horsefall v. Davy, 1 Stark. 169 Horsefall v. Mather, Holt, N. P. 7	•••	•••	•••	•••	332,	333
Horsefall v. Testar, 7 Taunt. 385	•••	•••	•••		•••	
Horsefall v. Testar, 7 Taunt. 385 Horsev v. Graham, L. R. 5 C. P. 9; 39	L. J. (C. P. 5	8;21	L. T. 8	30;	
18 W. R. 141	•••	•••				426
Horsey's Claim, Re, 5 Eq. 561; 37 L	. J. Ch	. 393 ;	18 L.	T. 103		
W. R. 577	~ ;;			D 50	36,	329
Horsey Estate, Lim. v. Steiger, '98, 2 L. J. Q. B. 747; 68 Ibid. 743; 79	Ų. D. 2 T T	59; YE	1, 2 Q	. B. 19	; 07 · 47	
W R 644 · 15 T. L. R. 367	ш. 1.	110;	100 200	u. 051 72 173	504	507
W. R. 644; 15 T. L. R. 367 Horsfall v. Hey, 2 Ex. 778; 17 L. J. Ex	z. 266	•••			, 002,	179
Horstord v. Webster, 1 Cr. M. & K. 090	•••		•••	•••	246,	278
Horsley v. Rush, cited 7 T. R. p. 209	•••	•••	•••	•••	•••	70
Horsley v. Rush, cited 7 T. R. p. 209 Hoskins v. Knight, 1 M. & S. 245 Houghton's Estate, Re, W. N. '94, p. 20	•••	•••	•••	•••	•••	318
Houghton's Estate, Ke, W. N. '94, p. 20		D 010	•••	•••	•••	
Houghton v. Konig, 18 C. B. 235; 25 I House and Land Investment Trust, Re,	⊿. J. U. 49 W 1	P. 210	•••	•	•••	180
				•••	•••	181
Honston v. Marchis of Sugo. 55 L. I. 6				***		146
How v. Greek, 3 H. & C. 391; 34 L. J.	Ex. 4;	10 Ju	r. N. S	1187	; 11	
L. T. 315; 13 W. R. 80 How v. Kennett, 3 A. & E. 659	•••	•••	•••	•••	•••	1
How v. Kennett, 3 A. & E. 659				~ ;	_:	330
Howard v. Fanshawe, '95, 2 Ch. 581;	64 L.	J. Ch. 6	666;7	3 L. T.	77;	-, Y
43 W. R. 645 Howard v. Lovegrove, L. R. 6 Ex. 43; 4	ιό Τ T	 Rv 1:	9 . 99	T. T. 5	904, 10 <i>8</i> ·	510
10 N/ D 100					,,,	449
Howard v. Maitland, 11 O. B. D. 695 : 8	53 L. J.	О. В.	42		•••	402
Howard v. Shaw, 8 M. & W. 118	•••	•••	•••	•••	•••	92
Howard v. Wood, 2 Lev. 245	•••	•••		•••	•••	8
Howard v. Maitland, 11 Q. B. D. 695; & Howard v. Shaw, 8 M. & W. 118 Howard v. Wood, 2 Lev. 245 Howard de Walden (Lord) v. Barber, 19 Howarth v. Armstrong, 13 T. L. R. 529 Howe v. Scarrott, 4 H. & N. 723; 28 L.	T. L. F	દે. 183	•••	163	, 362,	435
Howarth v. Armstrong, 13 T. L. R. 529	T 73		•••	•••	•••	142
Howell, Re, '95, 1 Q. B. 844; 64 L. J.	J. EX.	825 454 ·	79 I	T 479	. 49	200
W. R. 447	, у, в,	202;	12 L.	1.4/2	, 10	325
W. R. 447	•••				•••	400
Howlett v. Tarte, 10 C. B. N. S. 813; 8	1 L. J.	C. P. 1	46 ; 9	W. R.	868	81
Howse v. Webster, Yelv. 103	•••	•••	•••	•••	•••	452
Howse v. Webster, Yelv. 103 Hudd v. Ravenor, 2 Br. & B. 662 Hudson v. Cripps, '96, 1 Ch. 265; 65 L		•••		289,	296,	809
Hudson v. Cripps, '96, 1 Ch. 265; 65 L	. J. Ch	. 328 ;	73 L.	T. 741	; 44	400
Hudson & Williams 30 I. T 639	•••	•••	•••	•••	•••	439 340
Huffell v. Armitstead. 7 C. & P. 56	•••	•••	•••	•••	•••	467
Hugall v. M'Lean, 53 L. T. 94; 33 W. 1	R. 588	•••		•••	•••	345
Huggall v. McLean, C. & E. 391	•••	•••	•••	•••	•••	339
Hughes, Ex parte, 6 Ves. 617	•••	•••	•••	•••	•••	73
Hughes and Crowther's Case, 13 Kep. 66			T"T /	3 D 4	100,	149
W. R. 200	æ Gr.	94; 18	ш. Ј. (U. P. 44	; 7	88
Jur. 1136	480	•••	•••	•••	•••	180
Hughes v. Fanagan. 30 L. R. Ir. 111		•••		•••	•••	44
Hughes v. Hughes, 1 Ves. 161	•••	•••		•••		253
Hughes v. Metrop. Ry. Co., 2 App. Cas	. 439;	46 L.	J. C.	P. 583	36	
L. T. 932; 25 W. R. 680 Hughes v. Richman, Cowp. 125 Hughes v. Rimmer, '93, 2 Q. B. 314; 69	•••	•••	•••	•••	•••	341
Hughes v. Richman, Cowp. 125		417 . 4	0 117	D 70	•••	371
Hughes v. Robotham, Cro. Eliz. 302	7 LI. I.	417; 4				233 486
Hughes v. Smallwood, 25 Q. B. D. 306; 5	 9 L. J.		 503 : 6	3 L. T.	198	322
Huguenin v. Baseley, 14 Ves. 273; 1 W	h. & T.	L. C.	th ed.	247		73
Hull v. Tupper, 2 H. & C. 121	•••	•••	•••	•••	•••	87
Humberstone v. Dubois, 10 M. & W. 76	5	•••	• • • •	•••	•••	569
Humble v. Langston, 7 M. & W. 517	•••	•••	•••	•••	•••	441
Humphery v. Gery, 7 C. B. 567	•••	•••	•••	•••	•••	332 109
Humphery v. Conybeare, 80 L. T. 40 Humphreston's Case, 2 Leon. 216			•••	•••	•••	6
22	•••		•••	d^{2}		•
				w 2	•	

Humphreys v. Franks, 18 C. B. 323						AGE:
Humphreys v. Green, 10 Q. B. D. 148;	52 L. J.	О. В.	140 : 4	8 IL T	. 60	112
Humphry v. Damion, Cro. Jac. 300						245
Hungerford v. Clay, 9 Mod. 1	•••		•••	•••	•••	69
Hungerford v. Clay, 9 Mod. 1 Hunloke's Settled Estates, Re, Fitzroy L. J. Ch. 530; 86 L. T. 829 Hunt v. Allgood. 10 C. B. N. S. 253:	v. Hunle	oke, '0	2, 1 Ch	. 941;	71	
L. J. Ch. 530; 86 L. T. 829 Hunt v. Allgood, 10 C. B. N. S. 253; 3 Hunt v. Bishop, 8 Ex. 675; 22 L. J. E	90 T T	сb	010	•••	45,	
Umma Distan o P. off . oo T T D	007			•••	169,	481
Hunt v. Bishop, 8 Ex. 675; 22 L. J. E Hunt v. Colson, 3 Moo. & Sc. 790 Hunt v. Cope, Cowp. 242		•••	•••	•••		~~
Hunt v. Cone. Cowp. 242						237
Hunt v. Remnant, 9 Ex. 635; 23 L. J.	Ex. 135	; 18 J	ur. 335	•••	•••	169-
Hunt v. Singleton (referred to), 3 Rep.	60 a		· -·· -		_ 26	, 27
Hunt v. Wimbledon Local Board, 4 C.						00
40 L. T. 115; 27 W. R. 123 Hunter v. Hopetoun (Earl of), 13 L. T. Hunter v. Hunt, 1 C. B. 300; 14 L. J. Hunter v. Miller, 4 Macq. 560; 9 L. T. Hunter v. Nockolds, 1 Mac. & G. 640; Huntley v. Russell, 13 Q. B. 572; 18 I. Huntingdon (Earl of) v. Lord Mountjoy Hurd v. Fletcher, 1 Doug. 43 Hurleston v. Woodroffe, Cro. Jac. 519 Hurry v. Rickman, 1 Moo. & R. 126 Hurst v. Hurst, 4 Ex. 571; 19 L. J. E. Hussey v. Domville, 1903, 1 lr. R. 265 Hussey v. Horne-Payne, 4 App. Cas. 3 1; 27 W. R. 585	190	•••	•••	•••	•••	22 188
Hunter v. Hunt. 1 C. B. 800: 14 L. J.	C P. 11	s	•••	•••	•••	418.
Hunter v. Miller. 4 Macq. 560: 9 L. T.	159	•	•••	•••	•••	371
Hunter v. Nockolds, 1 Mac. & G. 640;	19 L. J.	Ch. 1	77	•••	•••	882:
Huntley v. Russell, 18 Q. B. 572; 18 I	" J. Q. 1	B. 239	•••	•••	•••	514
Huntingdon (Earl of) v. Lord Mountjoy	, 4 Leor	1. 147	; 1 An d	. 307	•••	215
Hurd v. Fletcher, 1 Doug. 43	•••	•••	•••	•••	•••	403
Hurleston v. Woodrone, Cro. Jac. 519	•••	•••	•••	•••	•••	136
Hurry v. Rickman, 1 500, & R. 120	410	•••	•••	•••	•••	282. 388
Hussey v Domville, 1903, 1 Ir. R. 265	** ***	•••	•••	•••	•••	188
Hussey v. Horne-Payne, 4 App. Cas. 3	11:48	L. J. (Ch. 846	: 41 L	T.	200
1; 27 W. R. 585 Hutchins v. Chambers, 1 Burr. 579 Hutchins v. Scott, 2 M. & W. 809 Hutchinson v. Taylor, 77 L. T. Newsp.	•••	•••	•••	,	•••	108
Hutchins v. Chambers, 1 Burr. 579	•••	•••	•••	•••	•••	288
Hutchins v. Scott, 2 M. & W. 809	•••	•••	15	1, 185,	222,	285
Hutchinson v. Taylor, 77 L. T. Newsp.	. 120		. .	-:	'	236
Hutt v. Morrell, 11 Q. B. 438; 16 L. J	. Q. B. 2	40; 1	2 Jur. 3	02		262
Hutchinson v. Taylor, 77 L. T. Newsp. Hutt v. Morrell, 11 Q. B. 488; 16 L. J. Hutton v. Warren, 1 M. & W. 466 Huyham v. Llewellyn, 28 L. T. 577; 2	1 W P	570 2	91, 30 '88	2, 309,	533,	117
Huatt of Criffiths 17 O R 505	1 11 . 15.	J10, 1	00	•••	97	07
Hyam r. Terry, 25 Sol. Journ, 871	•••	•••	•••	•••		115.
Hyde v. Hill. 3 T. R. 377	•••	•••	•••	•••	230.	388.
Hyde v. Skinner, 2 P. Wms. 196	•••	•••	•••	•••	•••	167
Hyde v. Warden, 8 Ex. D. 72; 47 L.	J. Ex.	121;	87 L. T	567;	26	
Hutt v. Morrell, 11 Q. B. 488; 16 L. J Hutton v. Warren, 1 M. & W. 466 Huxham v. Llewellyn, 28 L. T. 577; 2 Hyatt v. Griffiths, 17 Q. B. 505 Hyam v. Terry, 25 Sol. Journ. 371 Hyde v. Hill, 3 T. R. 377 Hyde v. Skinner, 2 P. Wms. 196 Hyde v. Warden, 3 Ex. D. 72; 47 L. W. B. 201	156, 157	', 169,	171, 19	1, 417,	423,	484
The Har De Le Celle & H. & N. 600 .	90 T T	F- 4	,			000
Ibbett v. De La Salle, 6 H. & N. 233; Ibbs v. Richardson, 9 A. & E. 849; 3 J Iggulden v. May, 9 Ves. 325; 7 East, 2 Ilford Park Estates v. Jacobs, '03, 2 Ch	ne 102	DA. T		•••	•••	502 584
Igoniden v. May. 9 Ves. 325: 7 East. 2	37	•••	15	1. 158.	167.	397
Ilford Park Estates v. Jacobs, '03, 2 Ch	. 522; 7	2 L. J.	Ch. 699	: 89 L	.T.	
295 : 19 T. L. K. 574	•••			•••	•••	136.
Imperial Loan Co. v. Stone, 1892, 1 Q.	B. 599;	61 L.	J. Q. E	. 449 ;	66	
L. T. 556		~ ;;; <i>-</i>				13.
Imray v. Oakshette, '97, 2 Q. B. 218; 45 W. R. 681 Inchiquin v. Lyons, 20 L. R. Ir. 474 Inderwick v. Leech, C. & E. 412 Ingham v. Fenton, 10 T. L. R. 113 Ingle r. Vaughan Jenkins, '00, 2 Ch. 3	86 Tr. J. 6	ų. в. о	44; 76	L. T. 6	32;	F00
40 W. R. 081	•••	•••	•••	•••	200,	90A
Indonwick a Leach C & E 412	•••	•••	•••	•••	50U,	247
Ingham n. Fenton, 10 T. L. R. 118	•••		•••	•••	540.	546.
Ingle v. Vaughan Jenkins, '00, 2 Ch. 3	68 ; 69	L. J.	Ch. 618	; 83 L	Т.	
155; 48 W. R. 684	•••	•••	•••	•••	•••	484
Inkop v. Morchurch, 2 F. & F. 501	•••	•••	•••	•••	•••	274
Inman v. Inman, 15 Eq. 260	•••	•••	•••	•••	•••	. 7
Inman v. Stamp, 1 Stark. 12	•••	•••			904	100-
Iredale v. Kendall, 40 L. T. 302	•••	•••	Z4	, ZOD,	Z84,	409
Irish Land Commission " Grant 10 At	m. Cas	14	•••	•••	381	571
Ingie v. Vaugnan Jenkins, vo, 2 Ch. 3 155; 48 W. R. 684 Inkop v. Morchurch, 2 F. & F. 501 Inman v. Inman, 15 Eq. 260 Inman v. Stamp, 1 Stark. 12 Iredale v. Kendall, 40 L. T. 362 Ireland v. Bircham, 2 Bing. N. C. 90 Irish Land Commission v. Grant, 10 Ap Isaac, Re, 4 My. & Cr. 11		- -	•••	•••		483
Isaacs, Rc. '94, 3 Ch. 506; 71 L. T. 380	5;42 W	. R. 68	35	•••		164
Isherwood, Ex parte, 22 Ch. D. 384; 5	2 L. J.	Ch. 37	0;48 I	J. T. 39	₹8;	
31 W. R. 442	•••	•••	•••	•••	•••	4 58.

Isherwood v. Oldknow, 3 M. & S.	282			•••	•••		AGR 448.
Ivav v. Hedges, 9 Q. B. D. 80		•••	•••	•••			004
Ive's Case, 5 Rep. 11 a	•••	•••	•••	•••	•••	•••	488
IVE T. Sailia, CIU. Eliz. 521		***	•••	•••	•••	•	489
Izard, Ex parte, 23 Ch. D. 115; Lzon v. Gorton, 5 Bing. N. C. 501	90 D. I • 7 Sc	. 802 ott. 587	Jr	 r 653	•••	•••	458 285
2011 01 001001, 0 1511g. 111 01 001	,,,	010, 00.	, , ,	000	•••	•••	
Jack v. M'Intyre, 12 Cl. & F. 151		•••	•••	•••	•••	•••	132
Jackman v. Hoddesdon, Cro. Eliz. Jackson, Ex parte, 14 Ch. D. 725	. 351 . 49 T	т 974		W D 6		•••	65 325
Jackson v. Bennan, cited in Hunt	ter's La	w of D	istress	5th ed	. n. 31	•••	280
Jackson v. Bennan, cited in Hunt Jackson v. Cator, 5 Ves. 688 Jackson v. Corbin, 8 M. & W. 79	•••	•••	•••	•••		•••	144
Jackson v. Corbin, 8 M. & W. 79	0	•••	•••	•••			113
Jackson v. Manson, 8 M. & W. 4.	77	•••	•••	•••	•••	•••	310 65
Jackson v. Corbin, 8 M. & W. 79 Jackson v. Hanson, 8 M. & W. 4 Jackson v. Neal, Cro. Eliz. 395 Jackson v. Northampton Tramwa	vs Co	55 L.	T. 91	•••		•••	497
Jackson v. Oglander, 2 H. & M.	1 65 ; 13	3 L. T.	16;1	3 W. R		•••	
Jackson v. Ross, '98, 2 I. R. 65		T '01	400.		T 101		398
W. R. 441 · 64 J. P. 559	OA Tr.	J. Ch.	493;	83 L.	339 339	389	507
Jacob v. King, 5 Taunt. 451	•••	•••	•••	•••		301,	308
Jackson v. Oglander, 2 H. & M Jackson v. Ross, '98, 2 I. R. 65 Jacob v. Down, '09, 2 Ch. 156; W. R. 441; 64 J. P. 552 Jacob v. King, 5 Taunt. 461 Jacobs v. Seward, L. R. 5 H. L. 4	64; 41	L. J. 0	C. P. 2	21; 27	L. T. 18	5 ´	476
Jacomb v. Harwood, 2 Ves. Sen. 2	265		•••		• • • •		61
Jacques v. Harrison, 12 Q. B. D. 246; 32 W. R. 470	100; 0	3 L. J	J. Q. I	D. 137	; 50 L.	1.	507
Jaeger v. Mansions Consolidated,	87 L. I	'. 690 ;	19 T.	L. R. 1	14, 145	•••	
						401,	489
Jaques v. Millar, 6 Ch. D. 153;	17 L.	J. Ch.	544;	37 L. T	r. 151;	25	115
James. Rs. 5 Eq. 384	•••	•••	•••	•••	•••	109,	5
James, Ex parte, 8 Ves. 337	•••	•••	•••	•••	•••	•••	73
W. R. 846 James, Re, 5 Eq. 334 James, Ex parte, 8 Ves. 387 James's Settled Estate, Re, 32 W. James v. Cochrane, 8 Ex. 556; 22 James v. Dean, 11 Ves. 383 James v. Dean, 15 Ves. 241 James v. Emery, 8 Taunt. 245 James v. Jenkins, Bull. N. P. 96 I Jarrett v. Hunter, 34 Ch. D. 1822	R. 898		. ·· <u>·</u> _	- ::		•••	4
James v. Cochrane, 8 Ex. 556; 22	2 L. J.	Ex. 20	1; 1 W	7. R. 23	2	•••	209 464
James v. Dean, 11 Ves. 363	•••	•••	•••	•••		•••	450
James v. Emery, 8 Taunt. 245	•••	•••	•••	•••	•••	•••	160
James v. Jenkins, Bull. N. P. 96 l Jarrett v. Hunter, 34 Ch. D. 182	b	,	141		 E 505.		49
W R 139	; 50 L.	J. Ch.	. 141;	99 L.	1. /2/;	33	109
James v. Landon, Cro. Eliz. 36		•••	•••	•••			76
James v. Lichfield, 9 Eq. 51			•••	•••	•••	•••	447
Jarman v. Hale, '99, 1 Q. B. 994;	; 68 L.	J. Q. 1	B. 681	•••	•••	•••	571
Jeffery v. Restard. 4 A. & E. 823	. 507	•••	•••	•••	•••	•••	54 311
W. R. 132 James v. Landon, Cro. Eliz. 36 James v. Lichfield, 9 Eq. 51 Jarman v. Hale, '99, 1 Q. B. 994; Jeffcock's Trusts, Re, 51 L. J. Ch. Jeffery v. Bastard, 4 A. & E. 823 Jeffery v. Neale, L. R. 6 C. P. 240 19 W. R. 700	; 40 L	. J. C.	P. 19	1; 24]	L. T. 3	62;	
19 W. R. 700 Jeffery v. Stephens, 8 W. R. 427;	•••	···		•••	•••	•••	386
Jefferys v. Stephens, 8 W. R. 427; Jefferys v. Fairs, 4 Ch. D. 448; 46	g Jur.	N. S. 1	947 2 · 98 T	T 10	 • 95 W		116
667							205
Jeffryes v. Evans, 19 C. B. N. S. 2	246 ; 34	L. J.	C. P. 2	61; 11			
584; 13 L. T. 72; 13 W. R.	864	n	70. 1			410,	
Jegon v. Vivian, L. R. 1 C. P. 9; 14 W. B. 227 Jenkins v. Church, Cowp. 482 Jenkins v. Gething, 2 J. & H. 520 Jenkins v. Green (No. 1), 27 Beav	35 L.	J. C. P.	73; I 2. 201.	2 Jur. 202 20	N. S. 1 4. 207.	208.	209
Jenkins v. Church, Cowp. 482							49
Jenkins v. Gething, 2 J. & H. 520	·	···-				515,	525
	7. 487 ;	28 L.	J. Ch.	817; 5	Jur. N	. 8.	149
304 Jenkins v. Green (No. 2), 27 Beav	. 440	•••	•••		109,	141,	27
Jenkins v. Green (No. 3), 28 Beav	. 87; 1	De G.	F. & J	. 454	•••	•••	27
Jenkins v. Green (No. 2), 27 Beav Jenkins v. Green (No. 3), 28 Beav Jenkins v. Jackson, 40 Ch. D. 71	; 58 L	. J. Ch	. 124 ;	60 L.	T. 105 ;	37	
W. K. 253	•••	•••	•••	•••	910	947	402
Jenner v. Yolland. 6 Price. 3	••••	•••	•••	•••	219,	267.	302
W. R. 253 Jenner v. Clegg, 1 Moo. & R. 213 Jenner v. Yolland, 6 Price, 3 Jenney v. Brook, 6 Q. B. 323; 13	3 L. J.	Q. B. 8	76;8	Jur. 78	2	,	143
- Company of the Comp							

Jenuings v. Major, 8 C. & P. 61							AGE
Jenuings v. Major, 8 C. & P. 61 Jennings v. Throgmorton, Ry. & M. Jennings v. Throgmorton, Ry. & M.	 [951	•••	•••	•••	•••	•••	188 354
Jerred v. Edwards, 92 L. T. Jo. 8		•••	•••	•••	•••	•••	575
Jersey (Earl of) v. Neath Guardians	. 22 Q.	. B. D.	555 •	58 T.	Ϊ. Q.		0,0
573 : 37 W. R. 388	, 						199
573; 37 W. R. 388 Jervis v. Tomkinson, 1 H. & N. 19	5 : 26	L. J. E	x. 41	147	205.	207.	
Jesus College v. Gibbs, 1 Y. & C. H	čx. 145	•••					23
Jevons v. Harridge, 1 Saund. p. 7	•••	•••	•••	•••	•••	•••	21
Jew v. Wood, 1 Cr. & Ph. 185; 5	Jur. 95	4	•••	•••		•••	78
Jewel's Case, 5 Rep. 3 a	•••	•••	•••	•••	•••	152,	
Jinks v. Edwards, 11 Ex. 775				•••			398
Job v. Banister. 26 L. J. Ch. 125;	3 Ju	r. N. i	8. 93;	5 W.			
affirming 2 K. & J. 374	•••	•••	•••	•••	 79, W R	074	168
John v. Jenkins, 1 Cr. & M. 227	T Ch	#1# · 70	 T T	960 - 47	w v	2/4,	2/0
John v. John, '98, 24Ch. 578; 67 L. John Brothers Abergarw Brewery L. J. Ch. 149; 81 L. T. 771; Johns v. Ware, 1899, 1 Ch. 359;	Co n	Holme	,UU,	302, 47	199	. 9Z	62
I. J. Ch. 149 · 81 I. T. 771 ·	48 W	R 986	. RA.T	P 159	100,	416,	438
Johns v. Ware. 1899. 1 Ch 359:	88 T. J	. O R	155	80 T. T	 . 112 ·	47	400
W. R. 202						•••	521
Johns v. Whitley, 1 H. & N. 669	•••	•••		•••		•••	497
Johnson, Re. 70 L. T. 381	•••	•••				242,	
Johnson v. Edgware, &c., Ry. Co.,	35 Bea	v. 480	; 30 L	. J. Ch	. 322		174
Johnson v. Faulkener, 2 Q. B. 925	; 6 Ju	r. 8 32	•••	•••	•••	•••	261
Johnson v. Jones, 9 A. & E. 809				•••	69,	225,	234
Johnson v. St. Peter's, Hereford,	A. &	E. 520	•••	•••	•••	96,	449
Johnson v. Smart, 1 Roll. Abr. 508				_···			65
Johnson v. Upham, 2 E. & E. 250	; 28 L	. J. Q.	B. 25			S.	000
681			D. 100	•••	•••	290,	
Johnson v. Warwick, 17 C. B. 516	; 20 I	1. J. C.	P. 103	•••	 597 -	61,	401
Johnson v. Wild, 44 Ch. D. 146; W. R. 500	ра п. с). Ch. (522; 0.	2 Ц. Т.	551;	90	418
Johnstone v. Crompton & Co., '99,	2 Ch.	190 •	68 T.	J. Ch	559 -	47	410
W. R. 604	2 011.		· · · ·	. On			199
Johnstone v. Hall, 2 K. & J. 414	; 25	L. J. (Ch. 46	2; 2 J	ur. N.	S.	
							367
Johnstone v. Hudlestone, 4 B. & C	. 922	•••	•••	•••	469,	480,	569
Johnstone v. Hudlestone, 4 B. & C. Johnstone v. Milling, 16 Q. B. D.	460;	55 L. J	f. Q. B	. 162;	54 L.	Т.	
890 · 34 W R 988							163
Jolliffe v. Blumberg, 18 W. R. 78- Jolly, Re. Gathercole v. Norfolk, L. J. Ch. 661; 83 L. T. 118;	4	~···				•••	104
Jolly, Re, Gathercole v. Noriolk,	700, 1	Ch. 29	92; 100,	, 2 Ch	. 616 ;	69	F 77.0
L. J. Ch. 001; 83 L. T. 118;	48 W.	. K. DD	/ Ch K4		N	570,	9/2
Jolly v. Arbuthnot, 4 De G. & J. 1	224 , Z	о ш. л.	On. 54	/ ; o J	ur. M		959
Jones, Re, 26 Ch. D. 736; 53 L. J	r Ch	807 · K	от. т	488 •	32 W		258
785		, ,	·	. 100,		. 10.	47
Jones v. Beirstein, '99, 1 Q. B. 47	0:68]	L. J. Q.	B. 267	': 80 L	. T. 1	57 :	-•
47 W. R. 239; aff. '00, 1 Q.	B. 100	; 69 Ľ.	J. Q.	B. 1;	81 L	Т.	
553 : 48 W. R. 232	•••						294
Jones v. Bone, 9 Eq. 674; 39 L.	J. Ch. 4	105; 28	3 L. T	. 304;	18 W.	R.	
489	•••	•••	•••	•••	•••	•••	360
Jones v. Bridgman, 89 L. T. 500	•••	•••	•••	•••	•••		489
Jones v. Carter, 15 M. & W. 718		•••	•••	•••	236,		
Jones v. Chapman, 14 M. & W. 12	72		•••	•••	•••	•••	581
Jones v. Chappell, 20 Eq. 539; 44	Dorons	Un. 000	5	B 404	•••		350
Jones v. Commissioners of Inland Jones v. Daniel, '94, 2 Ch. 332; 6	ROVEIII	Ch /	569 · 7	D. 101	588		176
W. R. 687	, o 11. o	. Оп	JUZ , 1	<i>у</i> ш. т	. 500	, 72	103
Jones v. Davies, 5 H. & N. 766;	7 1bio	Z. 507 ·	29 T.	J. Ex	874	: 31	200
L. J. Ex. 116			, 		• • • •	,	484
Jones v. Foley, '91, 1 Q. B. 730;	60 L. J	г. Q. В	. 464 :	64 L.	r. 538	39	
	•••		•••		•••		581
Jones v. Green, 3 Y. & J. 298		•••	•••	•••	•••		228
	710	•••	•••	•••	•••		30 3
Jones v. Hawkins, 3 T. L. R. 59	•••	•••	•••	•••	•••	•••	405

						79	AGE
Jones v. Heavens, 4 Ch. D. 686;	25 W.	R. 460	•••	•••		*	228
Jones v. Hill, 7 Taunt. 392	•••	•••	•••	•••		•••	352
Jones v. Jones, 12 Ves. 186	•••	•••	•••	•••	•••	•••	157
Jones v. Jones, 12 ves. 180 Jones v. Jones, 3 B. & Ad. 967 Jones v. Jones, 22 Q. B. D. 425;	•••	•••	•••		•••	•••	25 4
Jones v. Jones, 22 Q. B. D. 425;	58 L. J	r. Q. B.	178;	60 L. T	'. 421 ;	37	
W. R. 479 Jones v. Lavington, '03, 1 K. B. 2 51 W. R. 161; 19 T. L. R. 7		···-	- ** .			•••	295
Jones v. Lavington, '03, 1 K. B. 2	58; 72	L. J. F	7. B. 8	8;881	J. T. 2	28;	900
J1 W. K. 101; 19 I. L. K. 7	7	•••	•••	•••	•••	397,	390. 477
Jones v. Marsh, 4 T. R. 464 Jones v. Mills, 10 C. B. N. S. 788							***
387	, 01	L. J. C		0,00	ш. м.	467,	481
Jones v. Nixon, 1 H. & C. 48; 31	I. J.	Ex. 505	: 8 Jr	r. N. S	. 648	100,	
Jones v. Owen, 18 L. J. O. B. 8	•••		,		•••		577
Jones v. Owen, 18 L. J. Q. B. 8 Jones v. Phipps, 9 B. & S. 761; I	L. R. 8	Q. B. 5	67; 37	L. J. (Q. B. 19	98;	
18 L. T. 813 : 16 W. R. 1044	l	•••		•••		475,	476
Jones v. Reynolds, 1 Q. B. 506; Jones v. Reynolds, 7 C. & P. 385	10 L. J	. Q. B.	193	•••	•••	79,	131
Jones v. Reynolds, 7 C. & P. 885	; 4 <u>A</u> .	& E. 80	5	. · <u>··</u> · _	•••	•••	85
Jones v. Kimmer, 14 Ch. D. 588;	49 L.	J. Ch. 7	775; 4	3 L. T.	. 111;	29	
W. R. 165	. :	~	···	•••	•••	•••	120
Jones v. Sawkins, 5 C. B. 142; 17	/ ш. д.	C. P. 9	2	•••		909	799.
Jones v. Sawkins, 5 C. B. 142; 13 Jones v. Shears, 4 A. & E. 832 Jones v. Shears, 7 C. & P. 346	•••	•••	•••	•••	96,	200,	500.
Jones v. Stone, '94, A. C. 122; 68	т. т	D	9 70	Г. Т 17.	4	78,	575
Jones v. Thompson 27 L. I O B	984	1. 0. 0	0, 10.	L. I. I.	****		226
Jones v. Thompson, 27 L. J. Q. B Jones v. Thorne, 1 B. & C. 715 Jones v. Verney, Willes, 169	. 201	•••	•••		•••	•••	362
Jones v. Verney, Willes, 169	•••			•••			52 .
Jones v. Victoria Graving Dock C	o., z U	. B. D.	314: 4	ŧО L. J.	Q. B. 2	19;	
36 L. T. 144; 25 W. R. 348 Jones v. Watts, 43 Ch. D. 574; 6 Jones v. Williams, 46 L. J. M. C.	••••	•••	•••	•••	•••	•••	110·
Jones v. Watts, 43 Ch. D. 574; 6	2 L. T.	471; 8	38 W.	R. 725	•••	•••	113.
Jones v. Williams, 46 L. J. M. C.	270;	36 L. T	. 559	•••	•••	•••	408
Jordan v. Twells, Cas. temp. Har	d. 171	•••	•••	•••	•••	•••	238
Jordan v. Wikes, Cro. Jac. 332 Joseph v. Lyons, 15 Q. B. D. 280		.	_	-:::			19
Joseph v. Lyons, 15 Q. B. D. 280		. J. Q.	в. 1;	51 L. 1	. /40 ;	33	432
W. R. 145	•••	•••	•••	•••	•••	•••	259
Joule v. Jackson, 7 M. & W. 450 Jourdain v. Wilson, 4 B. & A. 26 Joyner v. Weeks, '91, 2 Q. B. 8	e	•••	•••	•••	•••	•••	435
Journey of Weeks '01 9 () R 9	1 . 80	т.::т с) R. #	10 : 65	L.T.	16:	
39 W. R. 583						190.	347
		•••	•••	•••	•••		121
Joynes v. Statham, 3 Atk. 387 Jump v. Payne, 68 L. J. Q. B. 60	7	•••	•••	•••	•••	77,	459
Jurdain v. Steere, Cro. Jac. 83			•••	•••	•••	6	3, 64
Justice v. James, 14 T. L. R. 385	; 15 T	L. R.	181	•••	•••	•••	72 :
	. 44 T	T 0	D 610	. 99 T	Т 16		198
Kay v. Oxley, L. R. 10 Q. B. 360	; 44 L	. J. Q.	D. 210	; 00 L	1. 10	x	139
Kavanagh v. Gudge, 7 M. & Gr.	816 • 1	9 T. J	CP	1. 8 · ee	nr. 362		170
36 W. R. 508	•••			•••	•••	•••	536
Kaye v. Sutherland, 20 Q. B. D. 36 W. R. 508 Kearsley v. Oxley, 2 H. & C. 896 Kearsley v. Phillips, 11 Q. B. I	•••	•••	•••	•••	•••	•••	452
Kearsley v. Phillips, 11 Q. B. I). 621 ;	52 L.	J. Q.	B. 581	; 49 L	. Т.	
435 : 31 W. R. 909		•••		•••	•••	•••	84
Keates v. Cadogan, 10 C. B. 591	20 L	J. C. P	76;	15 Jur.	428	•••	355.
Keating v. Keating, Lloyd & G.	temp. S	Sugden,	133	•••		119	60 580
Keech v. Hall, 1 Doug. 21 Keech v. Sandford, Sel. Cas. in C	L 01	•••	•••	•••	6 8,	, 110,	78
Keen v. Priest, 4 H. & N. 236;	Д. ОІ				T 131	7	
W D 970					987	XOX	313
Kahoe w Maronia of Lanadowne	'98. A	C. 451	 : 62	L. J. P.	C. 97		357
Keightley v. Birch, 3 Camp. 521	A.	, 0, 101	••••			•••	318
Keightlev v. Watson, 3 Ex 716	•••	•••	•••	•••	•••		160
Keith v. R. Gancia & Co., '04. 1	Ch. 7	74;73	L. J. (Ch. 411	; 90 L	. T.	
Keightley v. Watson, 3 Ex 716 Keith v. R. Gancia & Co., '04, 1 327; 52 W. R. 532; 20 T. I	. R. 3	30	•••	•••	<u></u> 6	38, 69	76
Keith v. Twentieth Century Clu	b, 73 l	L. J. C1	h. 545	; 20 T.	Li. IV.	204	
•					Adde	nda,	CXII.

						P	AGE
Keith, Prowse & Co. v. National	Telep	hone C	o., '94	l, 2 C	h. 147	: 68	
L. J. Ch. 873; 42 W. R. 880 Kelly v. Coote, 5 Ir. C. L. Rep. 46	; 70 L.	T. 276	3	•••	•••	•••	479 10
Kelly v. Patterrson, L. R. 9 C. P.	681 ;	48 L.	j. c. :	P. 320	; 80 L	. T.	10
842		•••		•••	•••	94.	471
Kelly v. Rogers, '92, 1 Q. B. 910 40 W. R. 516	; 61 L	. J. Q.	В. 60	4;66.	L. T. 5	82 ; , 402,	408
Kelly v. Webster, 12 C. B. 283; 2	ı L. J.	. C. P.	163: 1	 16 Jur.	838	, 202,	426
Kemeys-Tynte, Re, 1892, 2 Ch. 21	1; 61	L. J. (Ch. 87 7	7;66	L. T. 7		
40 W. R. 423 Kemp v. Bird, 5 Ch. D. 974; 46 I	O		 97 T	т. Т. ко	. 05 337	 D	45
838	. J. U	1. 020 ;	01 L.	1. 50	357,	. n. . 359.	487
Kemp v. Christmas, 79 L. T. 233	•••	•••	•••	•••	•••		295
Kemp v. Derrett, 8 Camp. 510 Kemp v. Leater, '96, 2 Q. B. 162;			 D F94		T 'm 6		468
44 W. R. 453							575
Kemp v. Sober, 1 Sim. N. S. 517:	20 L.	J. Ch.	602;	15 Jur.	458	357,	
Kempe v. Cory, 2 Ventr. 227, 283 Kempe v. Crews, 1 Ld. Raym. 167 Kendall v. Baker, 11 C. B. 842; 2	•••	•••	•••	•••	•••	•••	256
Kendell a Ruker 11 C R 842 · 9	1 T. T	C P	110 - 1	8 Inr	479	•••	264 152
Kendall v. Hill, 6 Jur. N. S. 968 Kennan v. Murphy, 6 L. R. Ir. 100 Kennard, Ex parte, 21 L. T. 684 Kennard v. Ashman, 10 T. L. R. 2 Kennedy v. Woods, Ir. R. 1 C. L. Kensey v. Langham, Cas. temp. Te Kensington v. Phillips, 5 Dow, 61 Kensy v. Richardson, Cro. Eliz. 72 Kent Coast Ry. Co. v. London, Ch						•••	156
Kennan v. Murphy, 6 L. R. Ir. 100	8;8 <i>I</i>	bid. 28	5	•••	•••	•••	55
Kennard, Ex parte, 21 L. T. 684		···	•••	•••	•••	190	824 955
Kennedy v. Woods, Ir. R. 1 C. L.	113, 44 76	····	•••	•••	•••	130,	572
Kensey v. Langham, Cas. temp. Ts	lbot, 1	44	•••		•••	•••	2
Kensington v. Phillips, 5 Dow, 61		•••	•••	•••	•••	•••	108
Kent Coast Ry. Co. v. London, Ch.	8 ethem:	and Do	ver Rv	 Co :	s ('h - 6	56 •	65
19 L. T. 174; 16 W. R. 1027	•••				••••		23
19 L. T. 174; 16 W. R. 1027 Keppell v. Bailey, 2 My. & K. 517			•••		•••	•••	438
Kerby v. Harding, 6 Ex. 234; 20	L. J. E	x. 163	; 15 Ju	ar. 958	•••	294,	
Kerkin r. Kerkin, 3 E. & B. 399 Kerrison v. Smith, '97, 2 O. B. 449	5:66	L. J. Q	B. 7	62: 77	L. T.	344	88
Kerrison v. Smith, '97, 2 Q. B. 444 Kerslake u. White, 2 Stark. 508	•••	•••	•••	•••	•••	127,	136
Ketsey's Case, I Brownlow, 120	• • •	•••	•••	•••	•••	7, 8	, 10
Keyse v. Powell, 2 E. & B. 132; 2 Kidd v. Boone, 12 Eq. 89; 40 L. J	2 L. J. [. Ch. !	Q. В. 531 : 2	309 4 L. T.	356	•••	•••	191 242
Kidderminster (Mayor of) v. Hardy	vick, L	. R. 9	Ex. 13	•••	•••		22
Kilgonr v. Gaddes. '04 1 K. R 45	7 • 79 1	1. J K	R 23	13 - 80	L. T. 4	44;	105
90 Ibid. 438, 604; 19 T. L. R Kilmorey's Settled Estate, Re Earl	. 697 ;	20 166 W R	d. 240	•••	•••	•••	137 18
Kimber v. Admans, '00, 1 Ch. 412	: 69 L	. J. Ch	. 296 :	82 L.	T. 136		10
W. R. 322; 16 T. L. R. 207	•••	•••	•••	•••	•••	• • • • •	135
Kimpton v. Eve, 2 Ves. & B. 349		•••	•••	•••	•••	•••	358
Kind v. Ammery, Hutton, 28 Kine v. Balfe, 2 Ball & B. 343	•••	•••	•••	•••	•••	•••	278 112
King's Leasehold Estates, Re, 16 H			. T. 28	38 ; 21	W. R.	881	55,
Vine Full I . D & G ROO	T		D 14	- 10	T 37	100,	150
King v. England, 4 B. & S. 782; 634; 9 L. T. 645; 12 W. R.	308 L.	J. Q.	В. 14	5; 10	Jur. N	. 5.	804
King r. Eversfield, '97, 2 Q. B. 47	5; 66 1	L. j. Q	. B. 80	9;77	L. T. 1	195;	001
46 W. R. 51	•••	•••		•••	468	, 537,	
King v. Malcott, 9 Hare, 692 King v. Rymill, 78 L. T. 696	•••	•••	•••	•••	•••	453,	
Kingdon v. Nottle, 1 M. & S. 855		•••	•••	•••	•••	•••	450
Kingsbury v. Collins, 4 Bing, 202						531.	532
Kingsmill v. Millard, 11 Ex. 318			•••	•••	•••	134,	
Kinsella v. Hamilton, 2 W. Bl. 1	67]	•••	•••	•••	•••	•••	353 281
Kingsmill v. Millard, 11 Ex. 318 Kinlyside v. Thornton, 2 W. Bl. 1 Kinsella v. Hamilton, 26 L. R. Ir. Kinsman v. Jackson, 42 L. T. 80, Kintrea v. Perston, 1 H. & N. 357 Kirhy v. Riffen, 8 O. R. D. 201	558 ; 2	28 W. I	R. 601	•••	•••	•••	210
Kintrea v. Perston, 1 H. & N. 357 Kirby v. Biffen, 8 Q. B. D. 201;	; 25 I	J. J. E	k. 287				427
80 W. R. 823	51 L.	J. Q.	и. 188	, 10 1	L. T. 2	,	269
	•••		-••	•••	•••		

						F	AGE
Kirby v. Harrogate School Board	, '96, 1	Ch. 4	137 ; 68	5 L. J.	Ch. 3	76;	447
74 L. T. 62 Kirkland v. Briancourt, 6 T. L. R. Kirtland v. Pounsett, 2 Taunt. 145 Kirton v. Elliott, 2 Bulstr. 69; 1		•••	•••	•••	•••	977	447
Wirtland a Donnectt O Tourt 145	441	•••	•••	•••	•••	277,	92
Kirton w Fllictt 9 Bulety 60 . 1	Brown	 om: 19	 1 T	Roll Al	br 791	•••	9
Knibbs v. Hall, 1 Esp. 84 Knight, Re, 1 Ex. 802 Knight's Case, 5 Rep. 54 b Knight v. Benett, 3 Bing. 361, 864 Knight v. Clarke, 15 Q. B. D. 294	DIOWN	.UW, 12	,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	DOIL. 22.	01. 701		289
Knight. Re. 1 Ex. 802	•••	•••	•••	•••	94,	•••	386
Knight's Case, 5 Rep. 54 b	•••						150
Knight r. Benett. 3 Bing. 361, 864					94.	248.	276
Knight v. Clarke, 15 Q. B. D. 294	: 54 I	J. Q.	B. 509	•••	•••		576
Knight v. Cox, 18 C. B. 645; 25 I Knight v. Egerton, 7 Ex. 407	L. J. C	. P. 31	4	•••			78
Knight v. Egerton, 7 Ex. 407	•••	•••	•••	•••		315,	316
Knight v. Hickman, 29 Sol. Journ	. 386	•••	•••	•••		•••	
Knight v. Mory, Cro. Eliz. 60				•••		•••	421
Knight v. Simmonds, '96, 2 Ch. 29	94;65	L. J.	Ch. 583	3;74]	L. T. 5	63;	
44 W. R. 580	···	•••	•••		•••	•••	367
Knight v. Williams, '01, 1 Ch. 256	5; 70 L	J. Cl	1. 92;	83 L. 1	. 730;	49	400
W. R. 427	•••	•••	•••	•••	•••	187,	409
Wnotton Continue C. t. D. 200	•••	•••	•••	••••	•••	915	918
Knowles v. Curtis, 5 C. & P. 322	•••	•••	•••	•••	•••	310,	910
Konvette et Luces & B & A 880	•••	•••	•••	•••	•••	•••	138
W. R. 427 Knill v. Prowse, 33 W. R. 163 Knotts v. Curtis, 5 C. & P. 322 Knowles v. Blake, 5 Bing. 499 Kooystra v. Lucas, 5 B. & A. 830 Krell v. Henry, '03, 2 K. B. 740; '7 T. L. R. 823 · 19 Ibid. 711	79 T. J	ж в	794 -	90 T. 7	 1 398 •	18	100
T. L. R 828 · 19 Ibid 711	2 13. 0	. к. р.					162
T. L. R. 823; 19 <i>Ibid.</i> 711 Kusel v. Watson, 11 Ch. D. 1	29 : 48	8 T	L Ch.	413: 5	27 W.	R.	
					•••	98,	150
			•••			,	
Lacey & Son, Re, 25 Ch. D. 301 Lacy v. Lear, Peake, Add. Cas. 21 Ladd v. Thomas, 12 A. & E. 117;	•••	•••			•••		189
Lacy v. Lear, Peake, Add. Cas. 210	0	:	•••		•••		569
Ladd v. Thomas, 12 A. & E. 117;	4 Jur.	798	•••	•••	•••	•••	298
Ladbury, Ex parte, 17 Ch. D. 582;	; 50 L.	J. Ch.	838; 4	15 L. T	. 5	•••	458
Ladd v. Thomas, 12 A. & E. 117; Ladd v. Thomas, 12 A. & E. 117; Ladbury, Ex parte, 17 Ch. D. 582; Laing v. Smith, 3 F. & F. 97 Lainson v. Tremeere, 1 A. & E. 79; Lake v. Gibson, 2 Wh. & T. L. C., Lamare v. Dixon, L. R. 6 H. L. 41 Lamb v. Brewster, 4 Q. B. D. 607	•••	•••	•••	•••	•••	•••	122
Lainson v. Tremeere, 1 A. & E. 799	2	•••	•••	•••	•••	•••	227
Lake v. Gibson, 2 Wh. & T. L. C.,	7th ed	961		•••	•••	•••	63
Lamare v. Dixon, L. R. 6 H. L. 41	4;48	ւ. յ. Ծ	h. 203				117
Lamb v. Brewster, 4 Q. B. D. 607	; 48 L	J. Q.	B. 421	; 40 1	J. T. 5	57;	000
27 W. R. 478 Lamb v. Wall, 1 F. & F. 503	•••	•••	•••		•••		229
Lamb v. Wall, 1 F. & F. 503 Lambert v. M'Donnell, 15 Ir. C. L. Lambert v. Noveiu, 2 M. t. W. 222	D 19/		•••	•••		•••	491
Lambert v. Norris, 2 M. & W. 333	. 16. 10(····	•••	•••	•••	~ 4 ~	408
Lambourn v. McLellan, '03, 1 Ch. 617; 88 L. T. 748; 51 W. R.	806 . 7	 03 2 C	h 288	 . 72 L	C	h.	101
617: 88 L. T. 748: 51 W. R.	594:1	9 T. I.	R. 529	9	529.	530.	531
Lancashira Cotton Co. Re 35 Ch.	n asa	: • KR 1		. 781 ·	57 I.	T	
511; 36 W. R. 305 Lancashire Waggon Co. v. Nuttall, Lancaster, Case of the Duchy of, P Lancaster v. De Trafford, 31 L. J. (Lander and Bagley's Contract, Re.	•••	•••	•••		326,	327,	328
Lancashire Waggon Co. v. Nuttall,	40 L.	T. 291		•••	•••		3
Lancaster, Case of the Duchy of, P	lowd. 2	217	•••	•••	•••	•••	6
Lancaster v. De Trafford, 31 L. J.	Ch. 554	l	•••	•••	•••	•••	108
Lander and Bagley's Contract, Re.	'92, 3	Ch. 41	; 61 L	. J. Ch	. 707;	67	
L. T. 521 Lane v. Cowper, Moore, 103 Lane v. Cox, '97, 1 Q. B. 415; 66 W. R. 261	•••	•••	•••	•••	109,	156,	169
Lane v. Cowper, Moore, 108	<u></u>				•••	•••	6
Lane v. Cox, '97, 1 Q. B. 415; 66	L. J. 4	Į. B. 1	93; 76	ь. т.	135;	40	00 5
Tomo u Charlesta 7 Daire 1800	•••	•••	•••	•••	•••	•••	335
W. R. 261 Lane v. Crockett, 7 Price, 566 Lane v. Moeder, C. & E. 548 Lane v. Newdigate, 10 Ves. 192; 7 Langford v. Selmes, 3 K. & J. 220	•••	•••	•••	•••	•••	•••	220 220
Lane a Newdigate 10 Var. 100 - 5	P P	981	•••	•••	•••	1.99	316
Langford v. Selmon S K & J 990	• 2 In	N c	859	•••	77	220	415
Langley v. Hammond, L. R. 3 Ex.	161:	37 T.	J. Ex	118 .	18 T.	T.	=10
858; 16 W. R. 937	, '						138
Lant v. Norris, 1 Burr. 287	•••	•••	•••	•••	•••	158.	841
Lanyon v. Carne, 2 Saund. 165		•••	•••	•••	•••		217
858; 16 W. R. 937 Lant v. Norris, 1 Burr. 287 Lanyon v. Carne, 2 Saund. 165 Lascelles v. Lord Onslow, 2 Q. B. D	. 433 ;	46 L.	J. Q. I	3. 338 ;	36 L.	T.	-
459; 25 W. R. 496	•••	•••	•••	•••	•••	•••	
459; 25 W. R. 496 Last v. Dinn, 28 L. J. Ex. 94	•••	•••	•••	•••	•••		64
Latham a Atmood Con Com KIK							599

						P	AGR
Lavery v. Pursell, 39 Ch. D. 508; 37 W. R. 163	•••		•••	•••	•••		121
Law v. Local Board of Redditch, '8	2, 1 Q					72 ;	163
Lawder v. Blachford, Beat. 522	•••	•••	•••	•••	•••	•••	418
Lawrence v. Bennett, 1 Cox, 167 Lawrence v. Faux, 2 F. & F. 485 Lawrence v. Lawrence, 26 Ch. D.	•••	•••	•••	•••	164,	165,	
Lawrence v. Lawrence. 26 Ch. D.	795 :	53 L.	j. Ch.	982:	50 L.	т.	491
/15 : 32 W. R. /91	• • • •	•••			•••	•••	241
Lawrence v. Rowley, 27 Sol. Journ Lawrence v. Butler, 1 Sch. & L. 1	374	•••	•••	•••	•••		129 56
Lawrie v. Lees, 14 Ch. D. 249; 7 L. T. 210; 30 W. R. 185 Lawson v. Storey, 1 Ld. Raym. 19 Lawton v. Lawton, 3 Atk. 13 Lawton v. Salmon, 1 H. Bl. 259, 1 Lay v. Mottram, 19 C. B. N. S. 4; Laycock v. Tufnell, 2 Chit. 531 Laythoarp v. Bryant, 2 Bing. N. C Layton r. Hurry, 8 Q. B. 811; 15 Lea v. Thursby, '04, 2 Ch. 57; 73 I 667; 20 T. L. R. 470 Leach v. Thomas, 7 C. & P. 327	App. C	as. 19	 : 51 L.	J. Ch.	209 :	 46	90
L. T. 210; 30 W. R. 185		•••	•••	•••	12	, 72,	508
Lawson v. Storey, 1 Ld. Raym. 19	•••	•••	•••	•••	 510	 510	294 595
Lawton v. Salmon, 1 H. Bl. 259, 1	n. (a)	•••	•••	•••		518,	525
Lay v. Mottram, 19 C. B. N. S. 47	79 ` ´	•••	•••	•••	•••	′	153
Laycock v. Tufnell, 2 Chit. 581	795	•••	•••	•••	•••	•••	228 110
Layton r. Hurry, 8 Q. B. 811: 15	L. J. (Q. B. 2	 44	•••	•••	•••	293
Lea v. Thursby, '04, 2 Ch. 57; 73	L. J. C	ň. 518	; 89 L.	T. 744	; 90 I	bid.	
667; 20 T. L. R. 470 Leach v. Thomas, 7 C. & P. 327	•••	•••	•••	•••	 332,	 999	459 595
Leader v. Homewood, 5 C. B. N.	S. 546	; 27 L.	J. C.	P. 31	β; 4 J	ur.	320
N. S. 1062	•••	•••	•••	•••	•••	526,	527
Leader v. Moody, 20 Eq. 145; 44	L. J.	Ch. 7	11; 32	L. T.	422;	23	400
W. R. 606 Lear v. Caldicott, 4 Q. B. 128; 12 lear v. Edmonds, 1 B. & A. 157	L. J.	 О. В. 1	69:7	 Jur. 27	7		262
Lear v. Edmonds, 1 B. & A. 157_	•••	•	•••	•••	`. _	289,	296
Leather Cloth Co. v. Lorsont, 9 E	q. 345	; 39 I	. J. C	h. 86;	21 L	. Т	857
661; 18 W. R. 572	- · · · ·	•••	•••	•••	•••	•••	991
Lee v. Cooke, 2 H. & N. 584; 3 1	bid. 20	3:27	L. J. 1	Ex. 33	7:4	Jur.	
Lee v. Cooke, 2 H. & N. 584; 3 I N. S. 168	•••			•••	•••		289
N. S. 168	 5 T. J	·	540 - 9	 84 T. T	750	9.4	
N. S. 168	 5 T. J	·	540 - 9	 84 T. T	750	9.4	
N. S. 168	 5 T. J	·	540 - 9	 84 T. T	750	9.4	
N. S. 168	 5 T. J	·	540 - 9	 84 T. T	750	9.4	
N. S. 168 Lee v. Gaskell, 1 Q. B. D. 700; 4 W. R. 824 Lee v. Lopes, 15 East, 230 Lee v. Risdon, 7 Taunt. 188 Lee v. Smith, 9 Ex. 662; 23 L. J. Lee v. Stevenson, E. B. & E. 512 Leech v. Schweder, 9 Ch. 463; 48	 5 L. J. Ex. 1 ; 27 L. 3 L. J.	. Q. B. 98 J. Q.	 540; 8 B. 263 487; 36	34 L. T 	94	24 1, 98,	
N. S. 168 Lee v. Gaskell, 1 Q. B. D. 700; 4 W. R. 824 Lee v. Lopes, 15 East, 230 Lee v. Risdon, 7 Taunt. 188 Lee v. Smith, 9 Ex. 662; 23 L. J. Lee v. Stevenson, E. B. & E. 512 Leech v. Schweder, 9 Ch. 463; 48	 5 L. J. Ex. 1 ; 27 L. 3 L. J.	. Q. B. 98 J. Q.	 540; 8 B. 263 487; 36	34 L. T 	94	24 4, 98, 22	528 321 528 249 142
N. S. 168 Lee v. Gaskell, 1 Q. B. D. 700; 4 W. R. 824 Lee v. Lopes, 15 East, 230 Lee v. Risdon, 7 Taunt. 188 Lee v. Smith, 9 Ex. 662; 23 L. J. Lee v. Stevenson, E. B. & E. 512 Leech v. Schweder, 9 Ch. 463; 48	 5 L. J. Ex. 1 ; 27 L. 3 L. J.	. Q. B. 98 J. Q.	 540; 8 B. 263 487; 36	34 L. T 	94	24 4, 98, 22 	528 321 528 249 142 400 334
N. S. 168 Lee v. Gaskell, 1 Q. B. D. 700; 4 W. R. 824 Lee v. Lopes, 15 East, 230 Lee v. Risdon, 7 Taunt. 188 Lee v. Smith, 9 Ex. 662; 23 L. J. Lee v. Stevenson, E. B. & E. 512 Leech v. Schweder, 9 Ch. 463; 45 W. R. 633 Leeds v. Cheetham, 1 Sim. 146 Leeks, Re, '02, 2 Ir. R. 339 Lees Re 26 Ch. D. 496: 50 L. T.	Ex. 1 27 L. 3 L. J.	98 J. Q. Ch.	540; 8 B. 263 487; 30	34 L. T	94	24 4, 98, 22	528 321 528 249 142
N. S. 168 Lee v. Gaskell, 1 Q. B. D. 700; 4 W. R. 824 Lee v. Lopes, 15 East, 230 Lee v. Risdon, 7 Taunt. 188 Lee v. Smith, 9 Ex. 662; 23 L. J. Lee v. Stevenson, E. B. & E. 512 Leech v. Schweder, 9 Ch. 463; 45 W. R. 633 Leeds v. Cheetham, 1 Sim. 146 Leeks, Re, '02, 2 Ir. R. 339 Lees Re 26 Ch. D. 496: 50 L. T.	Ex. 1 27 L. 3 L. J.	98 J. Q. Ch.	540; 8 B. 263 487; 30	34 L. T	94 586	24 1, 98, 222 235,	528 321 528 249 142 400 334 460 12 482
N. S. 168 Lee v. Gaskell, 1 Q. B. D. 700; 4 W. R. 824 Lee v. Lopes, 15 East, 230 Lee v. Risdon, 7 Taunt. 188 Lee v. Smith, 9 Ex. 662; 23 L. J. Lee v. Stevenson, E. B. & E. 512 Leech v. Schweder, 9 Ch. 463; 45 W. R. 633 Leeds v. Cheetham, 1 Sim. 146 Leeks, Re, '02, 2 Ir. R. 339 Lees Re 26 Ch. D. 496: 50 L. T.	Ex. 1 27 L. 3 L. J.	98 J. Q. Ch.	540; 8 B. 263 487; 30	34 L. T	94 586	24 4, 98, 22 235, 	528 321 528 249 142 400 334 460 12 482
N. S. 168		98 J. Q. S 98 J. Q 82 W	540; 8 B. 263 487; 36 	34 L. T	94 586	24 4, 98, 222 235, 	528 321 528 249 142 400 334 460 12 482
N. S. 168 Lee v. Gaskell, 1 Q. B. D. 700; 4 W. R. 824		98 J. Q. Ch 82 W	 540; 8 B. 263 487; 36 R. 100	34 L. T	94 94 586	24 4, 98, 22 235, 	528 321 528 249 142 400 334 460 12 482 5 143
N. S. 168 Lee v. Gaskell, 1 Q. B. D. 700; 4 W. R. 824 Lee v. Lopes, 15 East, 230 Lee v. Risdon, 7 Taunt. 188 Lee v. Stevenson, E. B. & E. 512 Leech v. Schweder, 9 Ch. 463; 45 W. R. 633 Leeds v. Cheetham, 1 Sim. 146 Leeks, Re, '02, 2 Ir. R. 339 Leeg v. Benion, Willes, 43 Legh, Ex parte, 15 Sim. 445 Legh v. Heald, 1 B. & Ad. 622 Legh v. Hewitt, 4 East, 154 Legh v. Lillie, 6 H. & N. 165; 36 Lehain v. Philpott, L. R. 10 Ex.		98 J. Q. Ch 82 W	 540; 8 B. 263 487; 36 R. 100	34 L. T	94 94 586	24 4, 98, 222 235, 228, 98;	528 321 528 249 142 400 334 460 12 482 5 143 368 372
N. S. 168 Lee v. Gaskell, 1 Q. B. D. 700; 4 W. R. 824 Lee v. Lopes, 15 East, 230 Lee v. Risdon, 7 Taunt. 188 Lee v. Smith, 9 Ex. 662; 23 L. J. Leech v. Schweder, 9 Ch. 463; 45 W. R. 633 Leeds v. Cheetham, 1 Sim. 146 Leeks, Re, '02, 2 Ir. R. 339 Legs, Re, 26 Ch. D. 496; 50 L. T. Legg v. Benion, Willes, 43 Legh, Ex parte, 15 Sim. 445 Legh, Ex parte, 15 Sim. 445 Legh v. Heald, 1 B. & Ad. 622 Legh v. Hewitt, 4 East, 154 Legh r. Lillie, 6 H. & N. 165; 30 Lehain v. Philpott, L. R. 10 Ex. 23 W. R. 876	. Ex. 1; 27 L. 3 L. J	98 J. Q. B 98 J. Q 6th 82 W 6th	540; 8 B. 263 487; 36 R. 100 ; 9 W.	34 L. T	. 759 ; 94 586 ; 	24 1, 98, 222 235, 228, 98; 245.	528 321 528 249 142 400 334 460 12 482 5143 368 372
N. S. 168 Lee v. Gaskell, 1 Q. B. D. 700; 4 W. R. 824 Lee v. Lopes, 15 East, 230 Lee v. Risdon, 7 Taunt. 188 Lee v. Smith, 9 Ex. 662; 23 L. J Lee v. Stevenson, E. B. & E. 512 Leech v. Schweder, 9 Ch. 463; 45 W. R. 633 Leeds v. Cheetham, 1 Sim. 146 Leeks, Rc, '02, 2 Ir. R. 339 Leeg, Rc, 26 Ch. D. 496; 50 L. T Legg v. Benion, Willes, 43 Legh, Ex parte, 15 Sim. 445 Legh v. Heald, 1 B. & Ad. 622 Legh v. Hewitt, 4 East, 154 Legh v. Hillie, 6 H. & N. 165; 30 Lehsin v. Philpott, L. R. 10 Ex. 23 W. R. 876 Lehmann v. M'Arthur, 3 Eq. 746 496; 37 L. J. Ch. 625; 18 L		98 J. Q. Ch	540; 8 B. 263 487; 30 R. 100 ; 9 W. Ex. 22 ; 15 W. R.	B4 L. T	. 759; 94 2. 586; 	24 4, 98, 225, 235, 228, 98; 245, Ch. 424,	528 321 528 249 142 400 334 460 12 482 5 143 368 372
N. S. 168 Lee v. Gaskell, 1 Q. B. D. 700; 4 W. R. 824 Lee v. Lopes, 15 East, 230 Lee v. Risdon, 7 Taunt. 188 Lee v. Stevenson, E. B. & E. 512 Leech v. Schweder, 9 Ch. 463; 45 W. R. 633 Leeds v. Cheetham, 1 Sim. 146 Leeks, Re, '02, 2 Ir. R. 339 Lees, Re, 26 Ch. D. 496; 50 L. T Legg v. Benion, Willes, 43 Legh, Ex parte, 15 Sim. 445 Legh v. Heald, 1 B. & Ad. 622 Legh v. Heald, 1 B. & Ad. 622 Legh v. Heile, 6 H. & N. 165; 36 Lehain v. Philpott, L. R. 10 Ex. 23 W. R. 876		98 J. Q. Ch	540; 8 B. 263 487; 36 R. 100 ; 9 W. Ex. 22 W. R. 20	34 L. T	2. 759; 94 2. 536; 	24 4, 98, ; 22 235, 228, 98; 245, Ch. 424, 18;	528 321 528 249 142 400 334 460 12 482 482 5 143 368 372 , 329
N. S. 168 Lee v. Gaskell, 1 Q. B. D. 700; 4 W. R. 824 Lee v. Lopes, 15 East, 230 Lee v. Risdon, 7 Taunt. 188 Lee v. Stevenson, E. B. & E. 512 Leech v. Schweder, 9 Ch. 463; 45 W. R. 633 Leeds v. Cheetham, 1 Sim. 146 Leeks, Re, '02, 2 Ir. R. 339 Lees, Re, 26 Ch. D. 496; 50 L. T Legg v. Benion, Willes, 43 Legh, Ex parte, 15 Sim. 445 Legh v. Heald, 1 B. & Ad. 622 Legh v. Heald, 1 B. & Ad. 622 Legh v. Heile, 6 H. & N. 165; 36 Lehain v. Philpott, L. R. 10 Ex. 23 W. R. 876		98 J. Q. Ch	540; 8 B. 263 487; 36 R. 100 ; 9 W. Ex. 22 W. R. 20	34 L. T	2. 759; 94 2. 536; 	244	528 321 528 249 142 400 334 460 12 482 5 143 368 372 329 425
N. S. 168 Lee v. Gaskell, 1 Q. B. D. 700; 4 W. R. 824		98 J. Q. Ch	540; 8 B. 263 487; 36 R. 106 ; 9 W. Ex. 22 3; 15 V W. R.:	B4 L. T	2. 759; 94 586; L. T.	224 4, 98, 5, 22 2285, 228, 98; 245, Ch. 424, 18; 63,	528 321 528 249 142 400 334 460 12 482 5 143 368 372 329 425
N. S. 168 Lee v. Gaskell, 1 Q. B. D. 700; 4 W. R. 824		98 J. Q. B 98 J. Q 6h	540; 8 B. 263 487; 36 R. 100 ; 9 W. Ex. 22 3; 15 V W. R. 272; 86	24 L. T	2. 759; 94; 586; 	224 4, 98, 225, 228, 98; 228, 98; 424, 18; 255, ; 50	528 321 528 249 142 400 334 460 12 482 5 143 368 372 329 425 333 141 256
N. S. 168 Lee v. Gaskell, 1 Q. B. D. 700; 4 W. R. 824		98 J. Q. B 98 J. Q 6h	540; 8 B. 263 487; 36 R. 100 ; 9 W. Ex. 22 3; 15 V W. R. 272; 86	24 L. T	2. 759; 94 586; L. T.	224 4, 98, 5, 22 2285, 228, 98; 245, Ch. 424, 18; 63,	528 321 528 249 142 400 334 460 12 5 143 368 372 329 425 333 141 256 516 463
N. S. 168 Lee v. Gaskell, 1 Q. B. D. 700; 4 W. R. 824		98 J. Q. B 98 J. Q 6h	540; 8 B. 263 487; 36 R. 100 ; 9 W. Ex. 22 3; 15 V W. R. 272; 86	24 L. T	2. 759; 94 2. 586; L. T 2. B	244 4, 98, 222 2285, 228, 98; 245, Ch. 424, 18; 63, 255, : 50	528 321 528 249 142 400 334 460 12 5 143 368 372 329 425 5 133 314 1,256 5 16 46 46 46 46 46 46 46 46 46 46 46 46 46
N. S. 168 Lee v. Gaskell, 1 Q. B. D. 700; 4 W. R. 824	15 L. J	98 J. Q. B 98 J. Q. Ch	540; 8 B. 263 487; 36 R. 100 ; 9 W. Ex. 22 3; 15 V W. R. 272; 86	24 L. T	2. 759; 94 586; 	224 236, 228, 98; 245, Ch	528 321 528 249 142 400 334 460 12 5 143 368 372 329 425 333 141 256 516 463

						D	AGE
Lepla v. Rogers, '93, 1 Q. B. 31;	RR T.	r 594			20	r.	426
Leslie v. Crommelin, 2 Ir. R. Eq.				•••	•••	•••	55
Lester & Comment, 2 II. It. Eq.	104	•••	•••	•••	•••	•••	
Lester v. Foxcroft, Coll. P. C. 108 Letchford, Re, 2 Ch. D. 719; 45 I	· · · · ·		. OF T	m 40		•••	111
Leuchiord, As, 2 Ch. D. 719; 40 1	J. J. U	11. 230	; 39 11.	1.40	0	•••	5
Lever v. Koffler, '01, 1 Ch. 543; 7	(0 Tr. 1	. Ch.	395;8	4 L.	l. 084;	49	
W. R. 506				•••	•••	•••	117
Levy v. Lewis, 9 C. B. N. S. 872;			P. 14	1;73	ur. N.	8.	
759; 9 W. R. 388 Levy v. Sale, 37 L. T. 709	•••	•••	•••	•••	•••	•••	564
Levy v. Sale, 37 L. T. 709	•••	•••	•••	•••	•••	•••	160
Levy v. Stogdon, '98, 1 Ch. 478; '9	99, 1 C	h. 5 ; 6	7 L. J.	Ch. 31	3;68 I	bid.	
Levy v. Stogdon, '98, 1 Ch. 478; '9 19; 78 L. T. 185; 79 Ibid. 3	64	•••	•••				120
Lewers v . Earl of Shaftesbury, 2 Eq	ı. 270 :	12 Jur	. N. S.	389:1	4 L. T.	855	121
Lewes v. Ridge, Cro. Eliz. 863		•••	•••	•••	•••		481
Lewes v. Ridge, Cro. Eliz. 863 Lewis v. Baker, '04, W. N. 190; S	21 T. I	. R. 17	7	•••	Adder	nda. c	
Lewis v. Fothergill, 5 Ch. 103			• • • • • • • • • • • • • • • • • • • •	20	1, 202,		
Lewis of Marsh & Here 97	•••	•••	•••			,	206
Lewis v. Marsh, 8 Hare, 97 Lewis v. Read, 13 M. & W. 834; 1 Lewis v. Stephenson, 67 L. J. Q. B	A T. J	Er 2	95	•••	•••		282
Lewis " Stephenson 67 I. I O B	906	78 T.	า 1 <i>85</i>	•••		•••	447
Ley v. Peter, 3 H. & N. 101; 27 I	. 230 ,	- 08U	1. 100	•••	•••	•••	
Ley v. 1 ever, o 11. of N. 101, 21 L	. J. D.	X. 208	•••	•••	•••	91,	
Liddell, Re, 31 W. R. 238	m D	040	•••	•••	•••	•••	5
Lidderdale v. Duke of Montrose, 4				•••	•••	•••	3
Liddy v. Kennedy, L. R. 5 H. L.	134; 2		t. 150	•••	•••	•••	478
	•••	•••	•••	•••	•••	•••	370
	•••	•••	•••	•••	143,	144,	257
Liggins v. Inge, 7 Bing. 682	•••	•••	•••	•••	•••	•••	88
Lilley v. Bennett, 5 T. L. R. 156	•••	•••	•••	•••	•••	•••	354
Lillie v. Legh, 3 De G. & J. 204 Lincoln Coll. Case. 3 Rep. 60 a	•••	•••	•••	•••	•••	•••	381
		•••	•••	•••	•••	•••	26
Lincolnshire Finance Co. v. Farrar	nt, 2 T	. L. R.	248	•••	•••	•••	515
Linder v. Pryor, 8 C. &. P. 518	•••	•••	•••	•••		•••	364
Line v. Stephenson, 4 Bing, N. C.	678;	5 Ibid.	183		•••	•••	398
Lingham v. Warren, 2 Ball & B. &	36 ´	•••					289
Lingham v. Warren, 2 Ball & B. & Lisburne (Earl of) v. Davies, L. R.	1 C. I	2. 259	35 L.	J. C. 1	P. 193:	12	
Jur. N. S. 340 ; 13 L. T. 795	: 14 V	7. R. 8	33			•••	565
Lister v. Brown, 3 D. & Rv. 501	,						274
Lister v. Brown, 3 D. & Ry. 501 Lister v. Lane and Nesham, '93, 2	0 B	219 · A	9 T. T	· iii 1	3 589 .	69	
L. T. 176; 41 W. R. 626	ų. D.	,	- 11. 0		J. 000 ,		339
Llewellyn v. Earl of Jersey, 11 M.	₽ W	182	•••	•••	•••	•••	132
Llevellyn e Williams Cro Iso 9	50 W.	100	•••		•••		147
Tland a Chartham 2 Ciff 171	00	•••	•••	•••	•••	•••	3
Llewellyn v. Williams, Cro. Jac. 2. Lloyd v. Cheetham, 3 Giff. 171	•••	•••	•••	•••	•••	•••	
Lloyd v. Crispe, 5 Taunt. 249	 T 10-	•••	•••	•••	•••	•••	424
Lloyd v. Davies, 2 Ex. 103; 18 L	. J. ĽX	. 80	***	···	m	•••	256
Lloyd v. Dimmack, 7 Ch. D. 398;	; 4/ L.	J. Ch.	898;	38 L.			
W. R. 458	•••	•••	•••	•••	•••	161,	
Lloyd v. Johnson, 1 B. & P. 340 Lloyd v. Nowell, '95, 2 Ch. 744	•••	•••	•••	•••	•••	•••	354
Lloyd v. Nowell, '95, 2 Ch. 744	•••	•••	•••	•••	•••	•••	105
Lloyd v. Rosbee, 2 Camp. 453	•••	•••	•••	•••	•••	566,	
Lloyd v. Tomkies, 1 T. R. 671	• • •	•••	•••	•••	•••	•••	399
Lloyd v. Tomkies, 1 T. R. 671 Lloyd and Tooth, Re, '99, 1 Q. B	. 559 ;	68 L.	J. Q.	B. 376	; 80 L	. Т.	
394			•••	•••	•••	544.	548
Llyuvi Coal Co., Re, 7 Ch. 28;	41 L.	J. Bl	c. 5; 2	5 L. 7	Г. воя;	20	
W. R. 105	•••	•••	•••	•••	•••	•••	460
Loader v. Kemp. 2 C. & P. 375	٠		•••		•••	•••	345
Lobban v. Cooke, 3 H. & N. 238;	27 L.	J. M.	('. 254	: 6 W	. R. 498	3	231
Lock v. Furze, L. R. 1 C. P. 441;	35 L.	J. C. P	. 141 :	15 L.	T. 161 :	14	
W. R. 403		•••	,			404,	405
Lock v. Pearce, '93, 2 Ch. 271;	32 L.	J Ch.	589 •	68 T.	T 569 :	41	
W. R. 369	- ·					507,	508
Locke r. Matthews, 13 C. B. N. S.	753	82 L	T C P	98 - 0	Inr N	g',	
874; 7 L. T. 824; 11 W. R.						463,	571
Lockier v. Paterson, 1 C. & K. 27		•••	•••	•••	•••		307
		•••	•••	•••	•••	•••	266
Lockwood v. Coysgarne, 3 Burr. 1 Lockwood v. Wilson, 43 L. J. C.	0/U 10 170	. 90 T	T 70	1 . 00	w v	010	386
LOCKWOOD 7. WIISON, 43 L. J. C.	4. 1/8 9 T. T	, ov L	. 1. 10 189	1; 22	W . IV.	982 986	

				P.	4GE
Lofts v. Bourke, 1 T. L. R. 58		•••	•••	•••	71
Logan v. Hall, 4 C. B. 598; 16 L. J. C. P.	252; 11 Ju	ır. 804	8	882,	418
T		•••	•••		350
London v. Southwell, Hob. 303		•••		•••	143
London (Bishop of) v. Web, 1 P. Wms. 527	·	•••	•••	:	212
London Bridge Buildings Co. v. Thomson,	89 L. T. 50	•••	•••	•••	506
London, Chatham and Dover Ry. Co. v. Bu	ill, 47 L. T.	413	•••		867
London (City of) v. Mitford, 14 Ves. 41		•••		•••	167
London (City of) v. Pugh, 4 Bro. P. C. 895	•••		•••	•••	228
London (City of) v. Nash. 3 Atk. 512			•••		341
London (Corporation of) v. Riggs, 13 Ch. D	. 798: 49	L. J. Ch	297 :	42	
L. T. 580; 28 W. R. 610		•••			137
London County Council v. Wandsworth Be	orough Cou	ncil. '08	. 1 K.		•
797: 72 L. J. K. B. 899: 88 L. T. 78	8: 51 W.	R. 499 :	67 J.	P.	
797; 72 L. J. K. B. 899; 88 L. T. 78 215; 19 T. L. R. 872; 1 L. G. R. 462			•••		390
London Freehold Property Co. v. Suffield,	97. 2 Ch. 6	08 - 86	i. J. C	h.	
790 : 77 L. T. 445 : 46 W. R. 102					183
790; 77 L. T. 445; 46 W. R. 102 . London (Mayor of) v. Barnes, 12 T. L. R. 1	85	•••			345
London (Mayor of) v. Hedger, 18 Ves. 355.					353
London and Rirmingham Ry Co. w Winte	r Cr & M	57	•••		120
London and Birmingham Ry. Co. v. Winte London and Colonial Co., Re, Horsey's Clai	m 5 Eq. 5	RT		•••	36
London and North Western Ry. Co. v. Buc	kmaeter L	R 10			•
444; 44 L. J. M. C. 180; 33 L. T. 32	0 · 94 W	2 16	4	85	. 87
			i. I c		,
London and North Western Ry. Co. v. Gar 25; 21 L. T. 352; 18 W. R. 246	nece, o 254.	20,00	v. v		360
London and North Western Ry. Co. v. V	Voot T. R	2 C P	 KKQ .		000
		2 0. 1.	, ooo	90	76
London and South Western Ry. Co. v. Flow		1) 77	•••	•••	345
London and South Western Ry. Co. r. Gon			. ET T.		UZU
Ch see As I T AAO. SO W D see	iiii, 20 Cii.	D. 002	184	U. 187	199
Ch. 530; 46 L. T. 449; 30 W. R. 620 London and Suburban Land, &c., Co. r. Fi	ald 16 Ch	D :045	164,	τ,	100
Ch 540 . 44 I T 444	eia, io Cii.	D. 040	, 50 11.	٠.	360
Ch. 549; 44 L. T. 444	AC B N	6 708	T		900
London and Westminster Loan Co. v. Drake	-	. 0. 100		493,	597
C. P. 297; 5 Jur. N. S. 1407 London and Westminster Loan Co. v. Lon	don and Ma	W.			J41
Co., '93, 2 Q. B. 49; 62 L. J. Q. B. 3	10, 08 L. I	. 520 ;		r. 221,	oκn
670 London and Yorkshire Bank v. Belton, 15	P D 44	 7 . 54 T			200
	Q. D. D. 4	7, 04 1	1. J. W.		267
568; 34 W. R. 31 Long v. Clarke, '94, 1 Q. B. 119; 63 L. J	O B 100	T	 T 85		201
AO W D 100	. Q. D. 100	, US L	. 1. 05	z, 283,	004
42 W. R. 130 Long v. Millar, 6 C. P. D. 450; 48 L. J. 0	D 500.	41 T T			70.F
717 T) #00			-		107
W. R. 720	•• •••	•••	•••		
Long v. Rankin, Sug. Powers, 900	T T A	12 97.	00 T	58, T	180
Longbottom v. Berry, L. R. 5 Q. B. 123;			22 IA	I. K17	501
		•••	515,		
Longman v. Blount, 12 T. L. R. 520		•••	•••	130,	333 141
Longstaffe v. Meagoe, 2 A. & E. 167		T Ob	404 .		141
Lonsdale (Earl of) v. Lowther, '00, 2 Ch	. 007; 09		. 000 ;	90	100
L. T. 312; 16 T. L. R. 509 Lord Advocate v. Wemyss, '00, A. C. 48 .	•••	•••	46, 54,	08,	
Lord Advocate v. Wemyss, UU, A. C. 48			T G 4		10
Loring v. Warburton, E. B. & E. 507; 28 L.	J. Q. D. 31	; 4 Jur.	м. а. о	150	298
Love v. Pares, 13 East, 80	· · · · ·			158,	91 A
Lovelock v. Franklyn, 8 Q. B. 371; 16	L. J. Q.	n. 182;			170
1085	70 T T	D		130,	1/8
Lovell, Ex parte, Re Riggs, '01, 2 K. B. 10	р; /о т. э	. A. D.	041;		E 0.0
L. T. 428; 49 W. R. 624; 8 Manson,	200 1- 04 - 00 1	m acs	•••		506
Lovering, Ex parte, 9 Ch. 586; 43 L. J. B	к. у4; 30	L. 1. 621		•••	459
Low v. Innes, 4 De J. & S. 286	OL 700 - 0	e i m	105	50	341
Lowe v. Adams, '01, 2 Ch. 598; 70 L. J.	Cn. /88; 8	υ ь. Т.	189;	104	100
W. R. 37	•••	•••	81,	126,	400
Lowe v. Griffith, 1 Scott, 458	10.0	D 600		···	9
Lowe r. London and North Western Ry.	.o., 18 Q.		21 lv	J.	22
Q. B. 361 : 17 Jur. 375		•••	•••	•••	22

						P	AGE
Lowe v. Peers, 4 Burr. 2225	•••	•••	•••	•••	•••	•••	163
Lowe v. Ross, 5 Ex. 553; 19 L. J.	Ex. 3	18	•••	•••	•••	192,	33 0
Lowe v. Swift, 2 Ball & B. 536	•••	•••	•••	•••	•••	•••	53
Lowndes v. Fountain, 11 Ex. 487;	25 L.	J. Ex.	. 49	•••	•••	•••	372
Lowrey v. Barker, 5 Ex. D. 170;	49 L.	J. Ex.	433:	42 L.	T. 215 :	28	
W. R. 559		•••	,		,	455,	457
Lows r. Telford, 1 App. Cas. 414;	45 T.	1.0	R 613	· 35 T	T RO		68
Touthour Weaver 41 Ch D 949	. KO	r" t".	D. 010	, 00 L	T 7T 9	10.	00
Lowther v. Heaver, 41 Ch. D. 248		L. J. (
37 W. R. 465	•••	•••	•••	•••	•••		116
Loyd v. Langford, 2 Mod. 174			•••	•••	•••	•••	491
Lucas, Re, 55 L. J. Ch. 101; 54 L Lucas v. Comerford, 1 Ves. Jun. 2	. T. 3	0	•••	•••	•••	•••	241
Lucas $m{v}$. Comerford, 1 Ves. Jun. 2	35; 3	Bro. C	. C. 16	6;88	lim. 499		432
Lucas v. Dixon, 22 Q. B. D. 357;	58 L	J. Q. 1	B. 161	; 37 V	V. R. 37	0	107
		•••		•••	•••	•••	103
T	53	•••	•••			•••	483
Lucas v. Tarleton, 3 H. & N. 116;	27 T	. J. Ex	246		305	, 315,	
Ludford v. Barber, 1 T. R. 90	,			•••	000	, 0.0,	49
Indiana (I and) a Dika '04 1 K F	2 591	. 79 T.	ïv	B 07/	T	T	70
Ludlow (Lord) v. Pike, '04, 1 K. E 458; 52 W. R. 475; 20 T. L.	ים פו. דטע פו	, 10 LL		D. 219	1, 80 1	. 1.	000
450; 52 W. R. 4/5; 20 1. L.	. R. 2/	0;00	J. F. 2				233
Ludlow (Mayor of) v. Charlton, 6	m. &	w . 828	•••	•••	•••	21	, 22
Ludwell v. Newman, 6 T. R. 458	•••	•••	•••			•••	404
Luker v. Dennis, 7 Ch. D. 227;	47 L.	J. Ch.	. 174;	37 L.	T. 827	; 26	
W. R. 167	•••	•••	•••	•••	•••	•••	488
Lumby v. Faupel, 88 L. T. 562; 9	0 Ibid	. 140 :	51 W	. R. 52	2:67 J	. P.	
202; 68 Ibid. 265; 1 L. G.	R. 49	3:19 [°]	T. L.	R. 42	8 : 20 <i>1</i>	bid.	
287		-,				, 392,	206
Lumley v. Metrop. Ry. Co., 34 L.	T 77.		•••	•••	000	, 002,	858
Lumley v. Ravenscroft, '95, 1 Q. l	1. //		τ	D 44		T.	990
	D. 000	; 04 1	. J. Q.	D. 44.	1; /2 1	J. I.	***
382 ; 43 W. R. 584		_ ::: -			•••	•••	118
Lumley v. Timms, 28 L. T. 157, 6					•••	•••	418
Lumsden v. Burnett, '98, 2 Q. B.	177;	67 L.	J. Q.	B. 661	; 78 L	. Т.	
778 ; 46 W. R. 664	•••	•••	•••	•••	•••	•••	307
Lundy Granite Co., Re, 6 Ch. 462	; 40	L. J. (Ch. 58	8; 24	L. T. 8	22 :	
19 W. R. 609	•••	•••	•••	·	•••		327
Lutterel v. Weston, Cro. Jac. 808		•••	•••				65
Luttges v. Sherwood, 11 T. L. R.	288	•••	•••	•••	•••	•••	243
Luxmore v. Robson, 1 B. & A. 584		•••	•••				338
Lybbe v. Hart, 29 Ch. D. 8; 54 L	T (1)		. FO T	т 29	•	•••	
Lybbe v. Hart, 29 Ch. D. 8; 54 L	. J. UI					•••	375
Lyburn v. Warrington, 1 Stark. 10	5 2			•••		•••	184
Lyddall v. Dunlapp, 1 Wils. 4	•••	•••	•••	•••	•••	•••	452
Lyde r. Russell, 1 B. & Ad. 394	•••		•••	•••	•••	525,	526
Lyell v. Kennedy, 14 App. Cas. 43	87;59	L. J.	Q. B.	268;6	32 L. T.	77;	
88 W. R. 353	•••	•••	•••	•••	•••	•••	573
Lyle r. Richards, L. R. 1 H. L. 2	22 : 8	L. J.	Q. B. 2	214 : 15	2 Jur. N	T. S.	
947; 15 L. T. 1		•••					134
Lynes v. Snaith, '99, 1 Q. B. 486	: 68 T	. J. O.	B. 27	5 : 80	T. T. 1		
47 W. R. 411	,	v. v.					571
Lynne Regis' (Mayor of) Case, 10	Don 1	00h			•••	•••	23
Lynne Legis (Mayor of) Case, 10 1	meh. 1	220	•••	•••	•••	000	
Lyon v. Greenhow, 8 T. L. R. 457 Lyon v. London City and Midlan		1 200			T	<i>5</i> 30,	389
Lyon v. London City and Midlan	d Bar	ık, '03,	2 K.	R. 135	; 72 L	. J.	
K. B. 465; 88 L. T. 392; 51	w. ĸ	. 400 ;	19 T.	L. K.	334	516,	522
Lyon v. Reed, 13 M. & W. 285; 13	3 L.J.	Ex. 87	7;8J	ur. 762	488	, 489,	490
Lyon v. Tomkies, 1 M. & W. 603	•••		•••	•••	•••	•••	306
Lyon v. Weldon, 2 Bing. 334		•••	•••	•••	•••		800
Lyons v. Elliott, 1 Q. B. D. 210;	45 L	J. Q.	B. 15	59:33	L. T. 8	306 :	
24 W. R. 296						250	260
Lyster v. Brown, 1 C. & P. 121	•••	•••	•••	•••	•••	200,	272
Lyster v. Drown, 1 C. & 1. 121	•••	•••	•••	•••	•••	•••	212
Massartman a Carlest Of C P D	960	go T	T 010	. 00 *	V D =	50	044
Macartney v. Garbutt, 24 Q. B. D							266
M Carthy, Re, 7 L. R. Ir. 473	•••	•••	•••	•••	•••	•••	819
McClure v. Little, 19 L. T. 287	<u></u>		•••	•••	•••	•••	340
M 'Creesh v. M'Geough, Ir. R. 7 C.	. L. 28	ı6	•••	•••		•••	79
M'Donnell w Pone, 9 Hare, 705:	16 Ju	r. 771		•••		489,	490
M 'Eachern v. Colton, '02. A. C. 10	4:71	L. J. P.	C. 20	: 85 L	T. 594	426	48A

						1	PAGE
M'Grath v. Bourne, Ir. R. 10 C. L.	160	•••	•••	•••	•••	•••	314
M'Grath v. Bourne, Ir. R. 10 C. L. McGrogor v. High, 21 L. T. 803	•••	•••	•••		•••	•••	528
Macher v. Foundling Hospital, 1 V.	. & B.	188	•••	•••	•••	358,	361
M'Ilroy v. Traill, '98, 1 I. R. 459 Mackay, Ex parte, 14 Q. B. D. 401			•••	•••	•••	•••	117
Mackay, Ex parte, 14 Q. B. D. 401	; 38 \	W. R. 8	825	•••	•••	***	459
Mackay v. Mackreth, 4 Doug. 218;	2 Ch	t. 461		T		412,	465
T I O D 1000 . 91 T m 014	mire, .	Ex pai	·te, '99,	2 Q. F	. 200 ;	801	000
Mackenzie, Re, Sheriff of Hertfords L. J. Q. B. 1003; 81 L. T. 214 Mackenzie v. Hesketh, 7 Ch. D. 67	 5 . 47	T	ຕະ້ວວາ	90 T	', oly,	3ZI,	023
26 W. R. 189	0; 41	ш. э.	он. 20	1, 30 1	J. 1. 1.		116
Mackintoch and Dontsunidd Impress	 ement	e Co	81 T. J	ÖR	184	•••	850
Mackintosh v. Trotter, 3 M. & W. 1 Macken v. Currie, C. & E. 361	184					•••	526
				•••			356
McManus v. Cooke, 35 Ch. D. 681:	56 L.	J. Ch.	662 :	56 L. I	. 900 :	35	
W. R. 754 McMurray v. Spicer, 5 Eq. 527 Macnaghten v. Baird, '03, 2 Ir. R. Maddison v. Alderson, 8 App. Cas.					•••	106,	112
McMurray v. Spicer, 5 Eq. 527		•••		•••	•••	•••	109
Macnaghten v. Baird, '03, 2 Ir. R. 7	731		•••	•••	•••	•••	137
Maddison v. Alderson, 8 App. Cas.	467;	52 L.	J. Q. E	. 737 ;	49 L.	T.	
303; 31 W. R. 820 Maddon v. White, 2 T. R. 159 Magdalen College Case, 11 Rep. 76z Magdalen Henrital v. Kvett A. A.	•••	•••	•••	•••	•••	106,	
Maddon v. White, 2 T. R. 159	•••	•••	•••	•••	•••	6,	466
Magdalen College Case, 11 Rep. 76	8.	•••	•••	•••	•••	•••	25
						40	
L. T. 466; 27 W. R. 602 Magee v. Lavell, L. R. 9 C. P. 107;		***		••••	26	, 38,	573
Magee v. Lavell, L. K. 9 C. P. 107;	; 48 L	. J. C.	P. 13	1; 30 1	L. T. 10	59 ;	•••
22 W. R. 334	••	•••	•••	•••	127,	128,	198
Mahon v. O'Farrell, 10 Ir. L. R. 527 Maitland v. Mackinnon, 1 H. & C. 6 255; 7 L. T. 427	207.	 DD T	···	40 . 8	 T NT	8	, 10
OKE. 7 T T 497	307;)Z L	J. LX.	19;0	Jur. M.	. D.	100
255; 7 L. T. 427	 5 · 40	T. T	Fr 99	 : . 99 T	 . T 50	39 .	100
							345
19 W. R. 286		•••	•••		•••	•••	
Malina v. Freeman, 2 Keen, 25: 6 L	. J. C	h. 133	•••	•••	•••	•••	120
Maldon's Case, Cro. Eliz. 33 Malins v. Freeman, 2 Keen, 25; 6 L Mallam v. Arden, 10 Bing. 299 Mallory's Case, 5 Rep. 111 b Malpas v. Ackland, 3 Russ. 273 Malwick v. Luter, 4 Rep. 26 a Manchester Bonded Warehouse Co.	••	•••				221,	
Mallory's Case, 5 Rep. 111 b .	••	•••	•••	•••	•••	′	222
Malpas r. Ackland, 3 Russ. 273 .	••	•••	•••	•••	•••	•••	58
Malwick v. Luter, 4 Rep. 26 a .	••	•••	•••	•••	•••	•••	64
). 507	; 49 L.	J.	
C. P. 809; 43 L. T. 476; 29 W	. R. 3	54		235	, 337,	345,	348
Manchester Brewery Co. v. Coombs, 16 T. L. R. 299; cf. S.C., 82 L. Manchestor, Sheffield, and Lincolnsh	'01,	2 Ch.	608;7	0 L. J.	Ch. 81	4;	
16 T. L. R. 299; ct. S.C., 82 L.	. T. 34	7	•••	82	, 865, 100 oc	430,	438
Manchester, Shemeld, and Lincolnsh	iire Ka	111. Co.	v. And	ierson,	98,20	л. 401	4 4 77
394; 78 L. T. 821; 46 W. R. 5 Mander v. Falck, '91, 2 Ch. 554; 65	שט דיתי	202	•••	•••	•••	4 01,	44/
Mander v. Ridgway, '98, 1 Q. B. 501	. A7 I	. T A	12 995	78 T	 . T 11	···	430
						•••	180
Mann v. Lovejoy, Ry. & M. 355	••	•••	•••	•••		•••	94
Mann v. Nunn. 43 L. J. C. P. 241:	80 L.	T. 526	•••	•••			129
Manning v. Fitzgerald, 29 L. J. Ex.	24	•••	•••	•••			132
Mann v. Lovejoy, Ry. & M. 355 Mann v. Nunn, 43 L. J. C. P. 241; Manning v. Fitzgerald, 29 L. J. Ex. Manning v. Lunn, 2 C. & K. 13 Mansel v. Norton, 22 Ch. D. 769; 5		•••	•••	•••	:	299.	387
Mansel v. Norton, 22 Ch. D. 769; 5	2 L. J	. Ch.	357; 4	8 L. T.	654;	31	
W B 395							446
Mansell v. Clements, L. R. 9 C. P. 1	.39	•••	•••	•••	•••	•••	71
Mansell's Settled Estate, Re, W. N.	1884, j	p. 209	•••	•••	•••	•••	70
Manser v. Dix, 8 D. M. & G. 703; 3	Jur. I	N. S. 2	52	•••	•••	•••	178
Mansell v. Clements, L. R. 9 C. P. 1 Mansell's Settled Estate, Re, W. N. 1 Manser v. Dix, 8 D. M. & G. 703; 3 Mansfield (Earl of) v. Blackburne, 6 Mant v. Collins, cited 2 Q. B. p. 919	Ding.	N.U.	420 O D -		 . 10 T	•••	530
mant v. Collins, cited 2 Q. B. p. 919	; 15	L. J.	v. b. j	p. 248	; 10 38	ır.	K 1 E
p. 390		•••	•••	•••	•••	•••	515 64
Mantle v. Wollington, Cro. Jac. 166 Mantz v. Goring, 4 Bing. N. C. 451	•		•••	•••		•••	836
Mannin Rrythers a Liberty & Co. '0	3. 1 C	 lh. 118	79 T	. J. Ch	63 -	3 87	500
Mappin Brothers v. Liberty & Co., '0 L. T. 523; 51 W. R. 264; 67	7 J. 1	· 91 ·	i L	G. R.	167:	19	
T. L. R. 51					,		134
Mandall a Cartia 49 Gal Tourn 597							50
Mariell v. Curis, 45 Sol. Journ. 507	T. T	CP.	190				259

Marker - Cooks In D 10 C I 1	40					1	AGE
Markey v. Coote, Ir. R. 10 C. L. I	9 07	• • • • •	•••	•••	•••	•••	92
Markham v. Stanford, 14 C. B. N.	. 5. 3/1	o		···	n	:::	126
Marlborough (Duke of) v. Osborn,	5 B. a	8. 67	; 88 L.	J. Q.	B. 148	; 10	
L. T. 28 ; 12 W. R. 418				···· -	~ ***	•••	217
Marlborough (Duke of) v. Sartoris	, 32 C	h. D. 6	16; 56	L.J.	Ch. 70	; 55	
L. T. 506; 85 W. R. 55 Marsh v. Curteys, Cro. Eliz. 528	•••	•••	•••	•••	•••	•••	44
Marsh v. Curteys, Cro. Eliz. 528	•••	•••	•••	•••	•••	•••	501
Marsh v. Estcourt, 24 Q. B. D. 14	7;59	L. J. Q). B. 10	00;38	W. R.	495	88
Marshall v. Berridge, 19 Ch. D. 2	38; 51	L. J.	Ch. 32	9; 45	L. T. 5	99 ;	
80 W. R. 93		•••	•••		•••	108.	109
Marshall v. Corporation of Queenl	orough	ı. 1 S. d	& S. 52	20	•••		22
Marshall v. Mackintosh, 46 W. R.			•••		•••	•••	346
Marshall v. Schofield & Co., 52 L.	J. O.	B. 58 :	47 L.	Г. 406	: 31 W	R.	
184		_,			85,	210	935
Marshall's Settled Estates, Re, 15	Ra 66	3 · 97 T	. T 49	۵	••• •••	, 210,	18
Marson v. London, Chatham and	Dover	Ruil	in R I	7 7101	 • 97 T	T	10
Ch. 483; 18 L. T. 319	Dove	Isaii.	00., 0 1	sq. IV.	., 0, 1	<i>.</i> . <i>.</i> .	135
Martin, Re, 41 Ch. D. 381; 58 L.	T Ob	470 .	40 T '	T EFE	. 97 117	ъ.	190
	9. CH	. 410;	оо п.	I. 999			300
497	07	•••	•••	•••	•••	•••	189
Martin r. Coulman, 4 L. J. K. B.	31	•••	•••	•••	•••	•••	534
Martin v. Crompe, 1 Ld. Raym. 8	₽0	•••	•••	•••	•••	•••	64
Martin v. Gilham, 7 A. & E. 540			~···	::: -	•••	333,	
Martin v. Pycroft, 2 D. M. & G. 7 Martin v. Roe, 7 E. & B. 244; 26	85 ; 22	4 L. J.	Ch. 94	16 Ju	ır. 1125	• • • •	127
Martin v. Roe, 7 E. & B. 244; 26	L. J. (Į. B. 1:	29;3.	lur. N.	S. 465	•••	520
Martin v. Smith, L. R. 9 Ex. 50;							
W. R. 836 Martyn v. Clue, 18 Q. B. 661; 22 Martyn v. Williams, 1 H. & N. 81	•••	•••	•••	•••	•••	94	, 98
Martyn v. Clue, 18 Q. B. 661 ; 22	L. J.	Q. B. 1	47	•••	•••	343,	435
Martyn v. Williams, 1 H. & N. 81	7; 26	Ĺ, J. E	Cx. 117	2	3, 214,	434,	446
Martyr v. Bradley, 9 Bing, 24		•••	•••	•••	•••	•••	530
Martyr v. Lawrence, 2 D. J. & S.	261			•••	•••		133
Maryon Wilson's Settled Estates,	Re. '01	. 1 Ch.	934 :	70 L. J	. Ch. 5	00:	
84 L. T. 708	•••	,		•••	•••	•••	190
Mascal's Case, 1 Leon. 62	•••	•••	•••	•••	•••	•••	449
Mashiter v. Smith, 3 T. L. R. 673		•••		•••	•••	•••	414
Mason v. Cole, 4 Ex. 375; 18 L. J	Ex. 4		•••	•••	•••	•••	158
Mason v. Corder, 7 Taunt. 9			***		•••		424
Mason's Orphanage, Re, 1896, 1 C	h 508	• 85 T.	i c		• 74 T.	т	121
161; 44 W. R. 839		, 00 1	. 0. 01	1. 100	, , , ,	• ••	37
Massey v. Goodall, 17 Q. B. 310;	90 T.	т в	KOR.	15 To	- QQ1	•••	871
Master of Fragon 95 T T 611 . 6	A T D	100.1	IQT T	D 91	1. 031	•••	265
Master v. Fraser, 85 L. T. 611 ; 6 Master v. Hansard, 4 Ch. D. 718 ;	AR T	T Ch	KUE .	. 16. 01 9 <i>0</i> T '	T FOE		200
	40 L.	J. CII.	, 909 ;	30 Д.	1. 555 ;		439
W. R. 570		-\ 707	m	D 000	•••	•••	
Master v. Miller, 1 Sm. L. C. (11th	n euruc) 101	; 4 1.	n. 320	•••	•••	184
Masters v. Farris, 1 C. B. 715 Masters v. Great Western Rail. Co	TD. 1	····	^" , ,				313
Masters v. Great Western Rau. Co	., Ke,	00, 2	ñ. P. c)//; `()1, 2 K.	. B.	
04 : /U I4 4 - N. D. DID : 04 I	4. I. DI	(1): 49	W . D	499: (4 ZH	447
Masters v. Green, 20 Q. B. D. 807 Mather v. Fraser, 2 K. & J. 586;	; 59 L	T. 470	B; 36	W. R. 3	591	2,	
Mather v. Fraser, 2 K. & J. 536;	25 L. J	J. Ch. 8	361;3	Jur. N	. S. 900) {	514,
				51	5, 517,	518,	521
Matheson v. Ross, 2 H. L. C. 286	•••	•••		•••	•••	•••	180
Mathews v. Whetton, Cro. Car. 23	3	•••	•••	•••	•••	•••	65
Mathias v. Mesnard, 2 C. & P. 353	}	•••	•••	•••		258,	259
Matthews v. Baxter, L. R. 8 Ex. 1	32; 49	2 L. J.	Ex. 7	3;28	L. T. 1	69;	
21 W. R. 389	•••	•••	•••		•••	•••	74
Matthews a Sewell & Tennt 970	•••		•••			•••	486
Matthews v. Usher, '00, 2 Q. B. 5: 83 L. T. 353; 49 W. R. 40; Matts v. Hawkins, 5 Taunt. 20	85 : 68	L. J. 0	Q. B. 98	88 : 69	Ibid. 8	56:	
83 L. T. 353 : 49 W. R. 40 :	16 T. I	. R. 49	š	-,		504,	575
Matte n Hawking 5 Taunt 90	4					,	877
Matures v. Westwood, Cro. Eliz. 5	99				•••	•••	435
Maughan, Re, 14 Q. B. D. 956; 54	ĬĬ. J	O R 1	28 - 29	W R	808	81.	
Mavor v. Croome, 1 Bing. 261				, 17. A			324
	•••	•••	•••	•••	•••	•••	363
Maw v. Hindmarsh, 21 L. T. 644	0 T T	Cit. o	257 · ···	о СТ 17	1 109 -	18	000
May v. Platt, '00, 1 Ch. 616; 6 W. R. 617	о п. о	. од. с	, ,	ו .עויי	. 120;	40	120

Marfield et Robinson 7 O R 486 - 0	Tur 808]	PAGE
Mayfield v. Robinson, 7 Q. B. 486; 9 Mayhew v. Suttle, 4 E. & B. 347;	24 L. J.	O. B.	54:1	Jur. 1	N. S.	126
308		•••			88	, 466
Mayho v. Buckhurst, Cro. Jac. 438	• • • • • • • • • • • • • • • • • • • •			•••		497
Maynard, Re, '99, 2 Ch. 347; 68 L. J Mears v. Callender, '01, 2 Ch. 388; 49 W. R. 584; 65 J. P. 615; 17 T.	. Ch. 609	; 48 So	l. Jour	n. 676	••••	50
Mears v. Callender, 'Ul, 2 Ch. 388;	70 L. J. Т Б кто	Ch. 62	1;84	L. T.	618;	E 0 0
Month of Cuthhert Ir R 10 C I. 30	L. D. DIO	51	y, 523, i	 	U, 008	236
Mechelen v. Wallace, 7 A. & E. 49	• •••	•••	•••	•••	•••	106
Meath v. Cuthbert, Ir. R. 10 C. L. 33 Mechelen v. Wallace, 7 A. & E. 49 Medwin v. Sandham, 3 Swanst. 685 Meesing v. Kemble, 2 Camp. 115 Megson v. Mapleton, 49 L. T. 744; 3	•••	•••	•••	•••		157
Meesing v. Kemble, 2 Camp. 115		•••	•••	•••	•••	315
Megson v. Mapleton, 49 L. T. 744; 3	2 W. R. 3	18		•••	281,	282
Mellers v. D. of Devonshire, 16 Beav. Melling v. Leak, 16 C. B. 652; 24 L.	252; 22	L. J. С	h. 310	9 75	ຸ 205,	
Mellor v. Walmesley, '04, 2 Ch. 525;	78 I. J	(th 75	Jur. N.	T. T	9 917 ·	93
						exii.
52 W. R. 505	; 23 W.	R. 55	•••		88.	492
Mennie v. Blake, 6 E. & B. 842; 25 I	. J. Q. B.	. 399	•••	•••	••• '	808
Merceron v. Dowson, 5 B. & C. 479	•••	•••	•••	•••	•••	481
Meredith v. Wilson, 69 L. T. 336	.''≱	•••	•••	•••	•••	368
Marrill of France 4 Tount 390		•••	•••	•••	•••	127
Messenger v. Armstrong, 1 T. R. 53	•••	•••	•••	148	566.	587
Messent v. Reynolds, 3 C. B. 194; 15	L. J. C.	P. 226 ;	10 Ju	r. 550		397
Messent v. Reynolds, 3 C. B. 194; 15 Metropolitan Counties Society v. Bro	wn, 26 B	eav. 45	4;28	L. J.	Ch.	
581 ; 5 Jur. N. S. 378 ; 7 W. R.	308	• • •	• • •		514.	517
Metropolitan Counties Assurance Co.	. v. Brow	n, 4 F	1. & P	4. 428	; 28	00
L. J. Ex. 340 Metropolitan District Rail. Co. and Co.	neh <i>Re</i> 1.	8 Ch 1	807	T		83
Ch. 277; 42 L. T. 73; 28 W. R.	685			, 40 1		145
Meux v. Cobley, '92, 2 Ch. 253; 61 L	. J. Ch. 4	49; 66	L. T.	86	848, 3	
				_	353,	
Meux v. Jacobs, L. R. 7 H. L. 481;			; 82 1	. T. 1		
23 W. R. 526 Mexborough (Earl of) v. Whitwood Urbe	an Dietwied	Counci		P	521,	
						497 227
Micklethwait v. Winter, 6 Ex. 644			•••		•••	199
Mckborough (Earl of) and Wood, Re, Micklethwait v. Winter, 6 Ex. 644 Middlemas v. Stevens, '01, 1 Ch. 57 47; 49 W. R. 430; 17 T. L. R. 2 Middlemore v. Goodale, Cro. Car. 503 Middleton v. Dodswell, 13 Ves. 266 Middleton v. Magnay, 2 Hem. & M. 25 Midgley v. Smith, 1893, W. N., p. 12 Midland Rail. Co. v. Cleckley, 4 Eq. 1 Midland Rail. Co. v. Haunchwood, &c. Ch. 778; 46 L. T. 301; 30 W. R.	4; 70 L	. J. Ch	. 320;	84 L	. Т.	
47; 49 W. R. 480; 17 T. L. R. 2	14	•••	•••	•••	•••	42
Middlemore v. Goodale, Cro. Car. 503	•••	•••	•••	•••	•••	435
Middleton v. Dodswell, 13 Ves. 258		•••	•••	•••	58,	, 60 101
Middle of Smith 1803 W N n 19	,,, D	•••	•••	•••	•••	121 427
Midland Rail. Co. v. Clecklev. 4 Eq. 1	9	•••	•••	•••	•••	199
Midland Rail. Co. v. Haunchwood, &c.	Co., 20	Ch. D.	552;	51 L	. J.	
Ch. 778; 46 L. T. 301; 30 W. R. Midland Rail. Co. v. Robinson, 37 Ch.	640	•••	•••	•••	•••	199
Midland Rail. Co. v. Robinson, 37 Ch.	D. 386	D 405		···		200
Migotti v. Colvili, 4 C. P. D. 233; 40	ш. э. с.	P. 095	; 40 L	L 1. /	41;	EAO
24 W. R. 744	•••	•••	•••	•••	•••	540 96
Mildmay v. Shirley, cited 10 East, 164 Mile End Old Town, Vestry of v. Whit Miles v. Furber, L. R. 8 Q. B. 77; 4	by, 78 L.	T. 80)			386
Miles v. Furber, L. R. 8 Q. B. 77; 4	2 L. J. Q	B. 41	; 27 L	. T. 7	56;	
21 W. R. 262 Miles v. Tobin, 17 L. T. 432; 16 W. J. Miller and Aldworth v. Sharp, '99, 1	•••	•••	•••	245,	259,	260
Miles v. Tobin, 17 L. T. 432; 16 W.	R. 465	***		•••	!	500
Miller and Aldworth v. Sharp, '99, 1 L. T. 77; 47 W. R. 268 Miller v. Goitein, Times, 16th Nov., '0 Miller v. Green, 2 Tyr. 1	Ch. 622	, 68 L.		. 822 ;		112
Miller of Goitein Times 18th Nov. 'O	4	•••	•••	Adder		
Miller v. Green, 2 Tyr. 1						261
Milloum Hengogle '08 9 () R 177 · A	KO 1. T 9	14 . 41	WR.	578	8	334
Miller v. Maynwaring, Cro. Car. 397	•••	•••	•••	•••	19, 1	
Miller v. Pratt, Dyer, 264 a, n. (40)	•••	•••	•••	•••]	
Miller v. Stewart, 2 F. 309	•••	•••	•••	•••		356 284
Miller v. Maynwaring, Cro. Car. 397 Miller v. Pratt, Dyer, 264 a, n. (40) Miller v. Stewart, 2 F. 309 Miller v. Tebb, 9 T. L. R. 515 Milliner v. Robinson, Moore, 682	•••	•••	•••	•••		64
MILLIANDE D. MOOTINGOES, MICORD, COM	•••					J =

						P1 ~-
Mills v. E. London Union, L. R.	8 C.	P. 79 ;	42 L.	J. C.	P. 46 ;	PAGI 27
L. T. 557; 21 W. R. 142 Mills v. Haywood, 6 Ch. D. 196 Mills v. Goff, 14 M. & W. 72; 14 I Mills v. Temple-West, 1 T. L. R. 56 Mills v. Trunper, 4 Ch. 320; 20 L. Millership v. Brookes, 5 H. & N. 79 Milne r. Taylor, 16 L. T. O. S. 172 Milne r. Laylor, 16 L. T. O. S. 172 Milne r. Laylor, 16 L. T. O. S. 172	•••	•••	•••	•••	´	346
Mills v. Gotf. 14 M. & W. 72: 14 I	 . J. E	 x. 249	•••	•••	•••	120, 165 478
Mills v. Temple-West, 1 T. L. R. 50	3			•••	•••	335
Mills v. Trumper, 4 Ch. 320; 20 L.	T. 384	i; 17 V	V. R.	128	•••	240
Milner, Taylor, 16 L. T. O. S. 172	91	•••	•••	•••	•••	188
Milner v. Jordan (or Myers), 8 Q. B	615 ;	15 L.	J. Q.	B. 157	; 10 J	ur.
Mileon a Stafford SO T T 500	•••	•••	•••	•••	•••	535
Minet v. Johnson. 68 L. T. 507	•••	•••	•••	•••	•••	576
Milsom v. Stafford, 80 L. T. 590 Minet v. Johnson, 63 L. T. 507 Minshall v. Lloyd, 2 M. & W. 450; Minshull v. Oakes, 2 H. & N. 793;	1 Jur	. 336	•••	•••	•••	526, 527
Minshull v. Oakes, 2 H. & N. 793; Minton v. Gleiger, 28 L. T. 449	27 L.	J. Ex.	194;	4 Jur.	N. S. 1	
Mitcelfor Westewey 17 C. R. N.	Q RKR	 ; 34 L	 ј. с.	P. 118		149
Mitchell v. Armstrong, 17 T. L. R. Mitchell v. Fordham, 6 B. & C. 274	495	•••	•••	•••	•••	42, 161
						387
Mitchell v. Reynolds, 1 P. Wns. 18 Mitchell v. Reynolds, 1 P. Wns. 18 Mitchison v. Thomson, C. & E. 72 Modlen v. Snowball, 4 D. F. & J. 19 Moffatt v. Gough, 1 L. R. Ir. 381 Mogridge v. Clapp. 1892, 3 Ch. 382	~ ~ ~. 			ມ. ປ. ∀ …	. <i>บ</i> . มข	22 6
Mitchell r. Reynolds, 1 P. Wms. 1	81	•••	•••	•••	•••	357
Modlen r. Snowball 4 D. F. & J. 14	 49 · 91	 L. J.	 Ch 44	•••	•••	508
Moffatt v. Gough, 1 L. R. Ir. 381				•••	•••	58
						0:
40 W. R. 663 Mogg v. Yatton. 29 W. R. 74 Mollett v. Brayne, 2 Camp. 103 Molony v. Kernan, 2 Dr. & War. 33 Molton v. Camroux, 2 Ex. 487; 4 1	•••	•••	•••	•••	42, 44,	. 47, 114 85. 86
Mollett v. Brayne, 2 Camp. 103				•••	•••	486
Molony v. Kernan, 2 Dr. & War. 31	l 2 17.		 T 12			78
Molyneux v. Hawtrey, '03, 2 K. B.	487 :	72 L. J	J. E.X. I. K. F	. 08, 30 3. 873 :	o 89 L.	T. 18
070 - 70 W D 00						400
Monk v. Arnold, '02, 1 K. B. 761;	71 L	J. K.	B. 441	; 86 I	T. 58	iO;
50 W. R. 667 Monk v. Cooper, 2 Str. 763 Monk v. Noyes, 1 C. & P. 265 Montague's Case, Lady, Cro. Jac. 3 Montgomery v. Earl of Wemiss (Th	•••	•••	•••	•••	•••	396
Monk v. Noyes, 1 C. & P. 265	•••	•••	•••		•••	339
Montague's Case, Lady, Cro. Jac. 3	01 a Ona	 anaharr	 v I.aa	 eee\ K	 D (65, 66 293 53
Diologomory v. Lant of Wemman (In			,			
Moodie v. Garnance, 3 Bulstr. 153	• • •	•••	•••		Dow, 2	238
Moodie v. Garnance, 3 Bulstr. 153 Moody v. Steggles, 12 Ch. D. 261	 				 	517
Moody v. Steggles, 12 Ch. D. 261 Moore, Ex parte, 2 Ch. D. 802; 35	 L. T.	 386; 2	 8 W. I	 R. 720	•••	517
Moore v. Clark, 5 Tauk. 90 Moore v. Clark, 5 Tauk. 90 Moore v. Clark, 1 Ch. D. 447	 L. T.	 386; 2	 8 W. :	 R. 720	 r 19.	517 459
Moore v. Clark, 5 Tauk. 90 Moore v. Clark, 5 Tauk. 90 Moore v. Clark, 1 Ch. D. 447	 L. T.	 386; 2	 8 W. :	 R. 720	 r 19.	517 459
Moore v. Clark, 5 Tauk. 90 Moore v. Clark, 5 Tauk. 90 Moore v. Clark, 1 Ch. D. 447	 L. T.	 386; 2	 8 W. :	 R. 720	 r 19.	517 459
Moore v. Clark, 5 Tauk. 90 Moore v. Clark, 5 Tauk. 90 Moore v. Clark, 1 Ch. D. 447	 L. T.	 386; 2	 8 W. :	 R. 720	 r 19.	517 459
Moore v. Clark, 5 Tauk. 90 Moore v. Clark, 5 Tauk. 90 Moore v. Clark, 1 Ch. D. 447	 L. T.	 386; 2	 8 W. :	 R. 720	 r 19.	517 459
Moode v. Stergles, 12 Ch. D. 261 Moore, Exparte, 2 Ch. D. 802; 35 Moore v. Clark, 5 Taunt. 90 Moore v. Clench, 1 Ch. D. 447; W. R. 169 Moore v. Doherty, 5 Ir. L. R. 449 Moore v. Drinkwater, 1 F. & F. 134 Moore v. Foley, 6 Ves. 232 Moore v. Greg, 2 Ph. 717 Moore v. Plymouth, 7 Taunt. 614 Moore v. Pyrke. 11 East. 52	L. T. 45 L.	386; 2	8 W. 3	34 L. '	 F. 13; 	288 517 459 24 28 571 286 167 432 431 304
Moode v. Stergles, 12 Ch. D. 261 Moore, Exparte, 2 Ch. D. 802; 35 Moore v. Clark, 5 Taunt. 90 Moore v. Clench, 1 Ch. D. 447; W. R. 169 Moore v. Doherty, 5 Ir. L. R. 449 Moore v. Drinkwater, 1 F. & F. 134 Moore v. Foley, 6 Ves. 232 Moore v. Greg, 2 Ph. 717 Moore v. Plymouth, 7 Taunt. 614 Moore v. Pyrke, 11 East, 52 Moore and Robinson's Banking Co.	L. T 45 L	 386; 2 J. Ch 	88 W. 1	R. 720 34 L. '	Γ. 13 ; 	288 517 458 24 27 282 167 432 431 304 J.
Moode v. Stergles, 12 Ch. D. 261 Moore, Exparte, 2 Ch. D. 802; 35 Moore v. Clark, 5 Taunt. 90 Moore v. Clench, 1 Ch. D. 447; W. R. 169 Moore v. Doherty, 5 Ir. L. R. 449 Moore v. Drinkwater, 1 F. & F. 134 Moore v. Foley, 6 Ves. 232 Moore v. Greg, 2 Ph. 717 Moore v. Plymouth, 7 Taunt. 614 Moore v. Pyrke, 11 East, 52 Moore and Robinson's Banking Co.	L. T 45 L	 386; 2 J. Ch 	88 W. 1	 R. 720 34 L. '	Γ. 13 ; 	288 517 458 24 27 282 167 432 431 304 J.
Moode v. Stergles, 12 Ch. D. 261 Moore, Ex parte, 2 Ch. D. 802; 35 Moore v. Clark, 5 Taunt. 90 Moore v. Clench, 1 Ch. D. 447; W. R. 169 Moore v. Doherty, 5 Ir. L. R. 449 Moore v. Drinkwater, 1 F. & F. 134 Moore v. Foley, 6 Ves. 232 Moore v. Greg, 2 Ph. 717 Moore v. Plymouth, 7 Taunt. 614 Moore v. Pyrke, 11 East, 52 Moore and Robinson's Banking Co. Bk. 60; 42 L. T. 443; 28 W. Moore, Nettlefold & Co. v. Singer M. 72 J. J. K. B. 577 . 88 L.	L. T 45 L 45 L	386; 2 J. Ch	 88 W 80 ; 	R. 720 34 L. ' 0. 379; 03, 2 K	F. 13;	238 517 458 24 24 28 167 163 411 304 J. 514, 518
Moode v. Stergles, 12 Ch. D. 261 Moore, Ex parte, 2 Ch. D. 802; 35 Moore v. Clark, 5 Taunt. 90 Moore v. Clench, 1 Ch. D. 447; W. R. 169 Moore v. Doherty, 5 Ir. L. R. 449 Moore v. Drinkwater, 1 F. & F. 134 Moore v. Foley, 6 Ves. 232 Moore v. Greg, 2 Ph. 717 Moore v. Plymouth, 7 Taunt. 614 Moore v. Pyrke, 11 East, 52 Moore and Robinson's Banking Co. Bk. 60; 42 L. T. 443; 28 W. Moore, Nettlefold & Co. v. Singer M. 72 J. J. K. B. 577 . 88 L.	L. T 45 L 45 L	386; 2 J. Ch	 88 W 80 ; 	R. 720 34 L. ' 0. 379; 03, 2 K	F. 13;	238 517 458 24 24 28 167 163 411 304 J. 514, 518
Moode v. Stergles, 12 Ch. D. 261 Moore, Ex parte, 2 Ch. D. 802; 35 Moore v. Clark, 5 Taunt. 90 Moore v. Clench, 1 Ch. D. 447; W. R. 169 Moore v. Doherty, 5 Ir. L. R. 449 Moore v. Drinkwater, 1 F. & F. 134 Moore v. Drinkwater, 1 F. & F. 134 Moore v. Foley, 6 Ves. 232 Moore v. Greg, 2 Ph. 717 Moore v. Plymouth, 7 Taunt. 614 Moore v. Plymouth, 7 Taunt. 614 Moore v. Pyrke, 11 East, 52 Moore and Robinson's Banking Co. Bk. 60; 42 L. T. 443; 28 W. Moore, Nettlefold & Co. v. Singer M 72 L. J. K. B. 577; 88 L. 489; affirmed '04, 1 K. B. 8 385; 90 L. T. 469; 68 J. P. 3	L. T 45 L 1 1 2 45 L 2. 45 L. 2. 3. 45 L. 3. 46 L. 3. 47 P. 47 P. 48 P.	386; 2 J. Ch		R. 720 34 L. ' 0. 379; 6899; 14, 457;	Γ. 13; 49 L 3. B. 16 9 T. L.	236 515 455 342 24 22 57 167 435 431 304 J. 514, 518 8; R. R.
Moode v. Stergles, 12 Ch. D. 261 Moore, Ex parte, 2 Ch. D. 802; 35 Moore v. Clark, 5 Taunt. 90 Moore v. Clench, 1 Ch. D. 447; W. R. 169 Moore v. Doherty, 5 Ir. L. R. 449 Moore v. Drinkwater, 1 F. & F. 134 Moore v. Foley, 6 Ves. 232 Moore v. Greg, 2 Ph. 717 Moore v. Plymouth, 7 Taunt. 614 Moore v. Plymouth, 7 Taunt. 614 Moore v. Pyrke, 11 East, 52 Moore v. Pyrke, 11 East, 52 Moore v. Nettlefold & Co. v. Singer M. 72 L. J. K. B. 577; 88 L. 489; affirmed '04, 1 K. B. 8 385; 90 L. T. 469; 68 J. P. 3 Moore v. Robinson, 48 L. J. Q. B.	L. T 45 L	386; 2 J. Ch		R. 720 34 L. ' 0. 379; 6899; 14, 457;	Γ. 13; 49 L 3. B. 16 9 T. L.	238 415 344 24 22 22 167 433 304 J. 514, 518 8; R 304
Moode v. Garlance, 3 bulst. 153 Moody v. Steggles, 12 Ch. D. 261 Moore, Ex parte, 2 Ch. D. 802; 35 Moore v. Clark, 5 Taunt. 90 Moore v. Clench, 1 Ch. D. 447; W. R. 169 Moore v. Doherty, 5 Ir. L. R. 449 Moore v. Drinkwater, 1 F. & F. 134 Moore v. Drinkwater, 1 F. & F. 134 Moore v. Greg, 2 Ph. 717 Moore v. Greg, 2 Ph. 717 Moore v. Plymouth, 7 Taunt. 614 Moore v. Pyrke, 11 East, 52 Moore and Robinson's Banking Co. Bk. 60; 42 L. T. 443; 28 W. Moore, Nettlefold & Co. v. Singer M. 72 L. J. K. B. 577; 88 L. 489; affirmed '04, 1 K. B. 8 385; 90 L. T. 469; 68 J. P. 3 Moore v. Robinson, 48 L. J. Q. B. Moores v. Choat, 8 Sim. 508; 3 Ju Moorden v. Porter, 7 C. B. N. S. 64	L. T	386; 2 J. Ch		R. 720 34 L. ' 0. 379; 6899; 14, 457;	Γ. 13; 49 L 52 W.	238 458 344 24 22 577 285 167 437 304 J 304 J. R. R 304 438 408
Moodie v. Starlance, 3 Dillar. 153 Moody v. Steggles, 12 Ch. D. 261 Moore, Ex parte, 2 Ch. D. 802; 35 Moore v. Clench, 5 Taunt. 90 Moore v. Clench, 1 Ch. D. 447; W. R. 169	L. T 45 L 45 L 45 L 45 L 45 L 45 L 46 L 47 L	386; 2 J. Ch cturing 9; 51 \ 3 L. J. 17 L. L. 10 L. T	28 W	R. 720 34 L. ' 37 L. ' 38 L. ' 38 L. ' 39 C. S.	F. 13; 49 L R. 312	230 451 451 452 571 283 451 451 304 451 5514, 518 8 304 433 403 4
Moodie v. Starlance, 3 Dillar. 153 Moody v. Steggles, 12 Ch. D. 261 Moore, Ex parte, 2 Ch. D. 802; 35 Moore v. Clark, 5 Taunt. 90 Moore v. Clench, 1 Ch. D. 447; W. R. 169 Moore v. Doherty, 5 Ir. L. R. 449 Moore v. Doherty, 5 Ir. L. R. 449 Moore v. Foley, 6 Ves. 232 Moore v. Foley, 6 Ves. 232 Moore v. Flymouth, 7 Taunt. 614 Moore v. Plymouth, 7 Taunt. 614 Moore v. Pyrke, 11 East, 52 Moore and Robinson's Banking Co. Bk. 60; 42 L. T. 443; 28 W. Moore, Nettlefold & Co. v. Singer M 72 L. J. K. B. 577; 88 L. 489; affirmed '04, 1 K. B. 8 385; 90 L. T. 469; 68 J. P. 3. Moore v. Robinson, 48 L. J. Q. B. Moore's Case (Sir William), Cro. Eli Morgan, Re, 24 Ch. D. 114; 53 L. 948	L. T. 45 L. 45 L. 1 Ex portage for a portage	386; 2 J. Ch	Ch. I. (Co., , W. R. 3666. 99;	R. 720 34 L. ' 03, 2 K 699; 13, 457;	F. 13; 49 L 52 W 31 W.	230 415 445 24 25 577 285 167 431 304 J 417 304 421 364 408 408 421 4.4
Moode v. Stergles, 12 Ch. D. 261 Moore, Ex parte, 2 Ch. D. 802; 35 Moore v. Clark, 5 Taunt. 90 Moore v. Clench, 1 Ch. D. 447; W. R. 169 Moore v. Doherty, 5 Ir. L. R. 449 Moore v. Doherty, 5 Ir. L. R. 449 Moore v. Poley, 6 Ves. 232 Moore v. Greg, 2 Ph. 717 Moore v. Plymouth, 7 Taunt. 614 Moore v. Pyrke, 11 East, 52 Moore and Robinson's Banking Co. Bk. 60; 42 L. T. 443; 28 W. Moore, Nettlefold & Co. v. Singer Moore v. Robinson, 48 L. J. Q. B. Moore's Case (Sir William), Cro. Eli Morgan, Re, 24 Ch. D. 114; 53 L. Morgan, Re, 22 Q. B. D. 592; 58	L. T. 45 L. 45 L. 1 Ex po R. 924 fanufa T. 738 20; 7 6156; 20 1 z. 26 J. Ch. L. J.	386; 2 J. Ch	Ch. I. (Co., , W. R. 3666. 99;	R. 720 34 L. ' 03, 2 K 699; 13, 457;	F. 13; 49 L 52 W 31 W.	238 458 344 24 22 577 285 167 431 304 J 304 J 304 421 364 438 408 428 448 87
Moodie v. Stergles, 12 Ch. D. 261 Moore, Ex parte, 2 Ch. D. 802; 35 Moore v. Clark, 5 Taunt. 90 Moore v. Clench, 1 Ch. D. 447; W. R. 169 Moore v. Doherty, 5 Ir. L. R. 449 Moore v. Doherty, 5 Ir. L. R. 449 Moore v. Poley, 6 Ves. 232 Moore v. Foley, 6 Ves. 232 Moore v. Foley, 6 Ves. 232 Moore v. Plymouth, 7 Taunt. 614 Moore v. Pyrke, 11 East, 52 Moore and Robinson's Banking Co. Bk. 60; 42 L. T. 443; 28 W. Moore, Nettlefold & Co. v. Singer M 72 L. J. K. B. 577; 88 L. 489; affirmed '04, 1 K. B. 8 385; 90 L. T. 469; 68 J. P. 35 Moore v. Robinson, 48 L. J. Q. B. Moore's Case (Sir William), Cro. Eli More's Case (Sir William), Cro. Eli Morgan, Re, 24 Ch. D. 114; 53 L. 948 Morgan, Re, 22 Q. B. D. 592; 58	L. T. 45 L. 45 L. 1 Ex portage for a portage	386; 2 J. Ch	Ch. I. (Co., , W. R. 3666. 99;	R. 720 34 L. ' 03, 2 K 699; 13, 457;	F. 13; 49 L 52 W 31 W.	230 415 445 24 25 577 285 167 431 304 J 417 304 421 364 408 408 421 4.4

				PAGE
Morgan v. E. of Abergavenny, 8 C	B. 768		•••	261
Morgan v. Bissell, 3 Taunt. 65			•••	79, 180
Morgan v. Davies, 3 C. P. D. 260	; 39 L. T. 60	; 26 W. R	. 816	469
Morgan v. Griffith, 7 Mod. 380	•••		•••	310
Morgan v. Griffith, L. R. 6 Ex.	70; 40 L. J	. Ex. 46;	23 L. T. 7	83 ;
19 W. R. 957			129.	810, 411
Morgan v. Hardy, 17 Q. B. D. 770				847, 448
Morgan v. Jackson, '95, 1 Q. B.	885; 64 L	J. Q. B. 4	62;72 L	. T.
593 ; 48 W. R. 479	 24		•••	409
Morgan v. Milman, 3 D. M. & G. S. Moritz v. Knowles, '99, W. N. 40,	24	··· ···	•••	55
Moritz v. Knowies, '99, W. N. 40,	83; 43 Sol.	Journ. 529	r m	103
Morley v. Carter, '98, 1 Q. B. 8;				
W. R. 77 Morley v. Jones, 32 Sol. Journ. 63	··· ···	••• ·••	•••	F 0.00
Morley v. Jones, 32 Sol. Journ. 63 Morley r. Pincomb, 2 Ex. 101; 13 Moroney v. Macnamara, Ir. R. 6 C Morphett v. Jones, 1 Swanst. 172 Morrell v. Fisher, 4 Ex. 591; 19 I	0 8 T. T Tr- 97	··· ···	•••	260
Moroney & Macheniere Ir R & C	! T. 181 • 90	W R 905	•••	141
Mornhett & Jones 1 Swanst 172	. 11. 131 , 20	17. 20. 000	•••	111, 112
Morrell v. Fisher, 4 Ex. 591: 19 I	J. Ex. 278			132, 183
Morris v. Beal, '04, 2 K. B. 585	: 78 L. J.	K B. 830	: 20 T. L	R.
682			***	892
Morris v. Edgington, 3 Taunt. 24			•••	137, 138
Morris v. Elme, 1 Ves. 139	•••		•••	72
Morris v. Edgington, 3 Taunt. 24 Morris v. Elme, 1 Ves. 139 Morris v. Kennedy, '96, 2 Ir. R. 2 Morris v. Matthews, 2 Q. B. 293; Morris v. Matthews, 2 Q. B. 293; Morris v. Matthews, 2 Q. B. 293;	47		•••	338, 449
Morris v. Matthews, 2 Q. B. 293;	11 L. J. Q. B.	. 57		311
Morris v. Rhydydefed Colliery Co.	, 3 H. & N.	478, 885;	28 L. J.	Ex.
119; 5 Jur. N. S. 339; 7 W. Morris v. Smith, 3 Doug. 279	R. 95	•••	•••	Ja, 200
Morrison v. Chadwick, 7 C. B. 266 Mortal v. Lyons, 8 Ir. Ch. R. 112			•••	210
Morrison v. Chadwick, 7 C. B. 266	3; 18 L. J. C.	P. 189	•••	236
		•••	•••	70, 111
Mortimer v. Shortall, 2 Dr. & War	. 303		•••	192
Morton v. Palmer, 51 L. J. Q. B. Morton v. Woods, 9 B. & S. 632;	7; 40 L. 1. 4	20; 30 W.	W 119	269
	1 0 100	000 . 90 T	INB	Q1.
Morton v. Woods, y B. & S. 632;	L. R. 4 Q. B.	293; 38 I	J. Q. B 701	81; 75
17 W. R. 414; affirming 37 L	L. R. 4 Q. B. . J. Q. B. 242	; 18 L. T.	791	75,
17 W. R. 414; affirming 37 L	. J. Q. В. 242	; 18 L. T. 88	791 3, 84, 247,	75, 251, 464
17 W. R. 414; affirming 37 L Moser, Re, 13 Q. B. D. 738; 33 V	. J. Q. В. 242	; 18 L. T. 88	791 3, 84, 247, 	75, 251, 464 528
17 W. R. 414; affirming 37 L Moser, Re, 13 Q. B. D. 738; 33 V Moses v. Taylor, 11 W. R. 81 Mose v. Revion, 25 Resy, 197: 1 L	J. Q. B. 242 V. R. 16 Fo. 474 : 19 I	; 18 L. T. 88 	791 3, 84, 247, 	75, 251, 464 528 361, 367
17 W. R. 414; affirming 37 L Moser, Re, 13 Q. B. D. 738; 33 V Moses v. Taylor, 11 W. R. 81 Mose v. Revion, 25 Resy, 197; 1 L	J. Q. B. 242 V. R. 16 Fo. 474 : 19 I	; 18 L. T. 88 	791 3, 84, 247, 	75, 251, 464 528 361, 367
17 W. R. 414; affirming 37 L Moser, Re, 13 Q. B. D. 738; 33 V Moses v. Taylor, 11 W. R. 81 Mose v. Revion, 25 Resy, 197; 1 L	J. Q. B. 242 V. R. 16 Fo. 474 : 19 I	; 18 L. T. 88 	791 3, 84, 247, 	75, 251, 464 528 361, 367
17 W. R. 414; affirming 37 L Moser, Re, 13 Q. B. D. 738; 33 V Moses v. Taylor, 11 W. R. 81 Moss v. Barton, 35 Beav. 197; 1 I Moss v. Gallimore, 1 Doug. 279 Moss v. James, 37 L. T. 715; 47 I Mostyn (Lord) v. Fitzsimmons, '02	L. J. Q. B. 242 V. R. 16 Eq. 474; 13 I L. J. Q. B. 164 ., 1 K. B. 512	; 18 L. T. 83 L. T. 623 D; 38 L. T ; '03, 1 K.	791 3, 84, 247, 67, 224, 595 B. 849;	75, 251, 464 528 361, 367 100 252, 297 422, 493
17 W. R. 414; affirming 37 L Moser, Re, 13 Q. B. D. 738; 33 V Moses v. Taylor, 11 W. R. 81 Moss v. Barton, 35 Beav. 197; 1 I Moss v. Gallimore, 1 Doug. 279 Moss v. James, 37 L. T. 715; 47 I Mostyn (Lord) v. Fitzsimmons, '02 Å. C. 46: 71 L. J. K. B. 89:	J. Q. B. 242 V. R. 16 Eq. 474; 13 I L. J. Q. B. 160 , 1 K. B. 512 72 Ibid. 164	; 18 L. T. 83 L. T. 623 0; 38 L. T ; '03, 1 K. : 19 T. L.	791 3, 84, 247, 67, 224, 595 B. 349; R. 191;	75, 251, 464 528 361, 367 100 252, 297 422, 493
17 W. R. 414; affirming 37 L Moser, Re, 13 Q. B. D. 738; 33 V Moses v. Taylor, 11 W. R. 81 Moss v. Barton, 35 Beav. 197; 1 I Moss v. Gallimore, 1 Doug. 279 Moss v. James, 37 L. T. 715; 47 I Mostyn (Lord) v. Fitzsimmons, '02 Å. C. 46: 71 L. J. K. B. 89:	J. Q. B. 242 V. R. 16 Eq. 474; 13 I L. J. Q. B. 160, 1 K. B. 512 72 Ibid. 164	; 18 L. T. 83	791 8, 84, 247, 67, 224, . 595 B. 349; R. 191;	75, 251, 464 528 361, 367 100 252, 297 422, 493
17 W. R. 414; affirming 37 L Moser, Re, 13 Q. B. D. 738; 33 V Moses v. Taylor, 11 W. R. 81 Moss v. Barton, 35 Beav. 197; 1 I Moss v. Gallimore, 1 Doug. 279 Moss v. James, 37 L. T. 715; 47 I Mostyn (Lord) v. Fitzsimmons, '02 Å. C. 46; 71 L. J. K. B. 89; T. L. R. 134; 88 L. T. 7; 51 Mostyn v. Lancaster, 23 Ch. D. 58	J. Q. B. 242 V. R. 16 Eq. 474; 13 I L. J. Q. B. 160, 1 K. B. 512 72 Ibid. 164	; 18 L. T. 83	791 8, 84, 247, 67, 224, . 595 B. 349; R. 191;	75, 251, 464 528 361, 367 100 252, 297 422, 493 04, 20 168 15;
17 W. R. 414; affirming 37 L Moser, Re, 13 Q. B. D. 738; 33 V Moses v. Taylor, 11 W. R. 81 Moss v. Barton, 35 Beav. 197; 1 I Moss v. Gallimore, 1 Doug. 279 Moss v. James, 37 L. T. 715; 47 I Mostyn (Lord) v. Fitzsimmons, '02 A. C. 46; 71 L. J. K. B. 89; T. L. R. 134; 88 L. T. 7; 51 Mostyn v. Lancaster, 23 Ch. D. 58 31 W R 686	Z. J. Q. B. 242 V. R. 16 Eq. 474; 13 I J. Q. B. 164 , 1 K. B. 512 , 72 Ibid. 164 W. B. 257 33; 52 L. J. (; 18 L. T. 83	791 8, 84, 247, 67, 224, . 595 B. 349; R. 191;	75, 251, 464 528 861, 367 100 252, 297 422, 493 04, 20 168 15; 58
17 W. R. 414; affirming 37 L Moser, Re, 13 Q. B. D. 738; 33 V Moses v. Taylor, 11 W. R. 81 Moss v. Barton, 35 Beav. 197; 1 I Moss v. Gallimore, 1 Doug. 279 Moss v. James, 37 L. T. 715; 47 I Mostyn (Lord) v. Fitzsimmons, '02 Å. C. 46; 71 L. J. K. B. 89; T. L. R. 134; 88 L. T. 7; 51 Mostyn v. Lancaster, 23 Ch. D. 58 31 W. R. 686 Mostyn (Lord) v. Manger. 17 T. L.	L. J. Q. B. 242 V. R. 16 Eq. 474; 13 I J. Q. B. 164 , 1 K. B. 512 , 72 <i>Ibid</i> . 164 . W. R. 257 13; 52 L. J. (; 18 L. T. 85	791 8, 84, 247, 67, 224, 595 B. 349; R. 191; 8 L. T. 7	75, 251, 464 528 361, 367 100 252, 297 422, 493 704, 20 168 15; 53 422
17 W. R. 414; affirming 37 L Moser, Re, 13 Q. B. D. 738; 33 V Moses v. Taylor, 11 W. R. 81 Moss v. Barton, 35 Beav. 197; 1 I Moss v. Gallimore, 1 Doug. 279 Moss v. James, 37 L. T. 715; 47 I Mostyn (Lord) v. Fitzsimmons, '02 Å. C. 46; 71 L. J. K. B. 89; T. L. R. 134; 88 L. T. 7; 51 Mostyn v. Lancaster, 23 Ch. D. 58 31 W. R. 686 Mostyn (Lord) v. Manger. 17 T. L.	L. J. Q. B. 242 V. R. 16 Eq. 474; 13 I J. Q. B. 164 , 1 K. B. 512 , 72 <i>Ibid</i> . 164 . W. R. 257 13; 52 L. J. (; 18 L. T. 85	791 8, 84, 247, 67, 224, 595 B. 349; R. 191; 8 L. T. 7	75, 251, 464 528 361, 367 100 252, 297 422, 493 704, 20 168 15; 53 422
17 W. R. 414; affirming 37 L Moser, Re, 13 Q. B. D. 738; 33 V Moses v. Taylor, 11 W. R. 81 Moss v. Barton, 35 Beav. 197; 1 H Moss v. Gallimore, 1 Doug. 279 Moss v. James, 37 L. T. 715; 47 I Mostyn (Lord) v. Fitzsimmons, '02 A. C. 46; 71 L. J. K. B. 89; T. L. R. 134; 88 L. T. 7; 51 Mostyn v. Lancaster, 23 Ch. D. 58 31 W. R. 686 Mostyn (Lord) v. Manger, 17 T. L. Mostyn v. West Mostyn Coal Co. 13 34 L. T. 325: 24 W. R. 401	J. Q. B. 242 V. R. 16 Eq. 474; 13 I J. Q. B. 164 , 1 K. B. 512 72 Ibid. 164 W. R. 257 33; 52 L. J. (R. 199, 281 1 C. P. D. 144	; 18 L. T. 85	791 3, 84, 247, 67, 224, 595 B. 349; R. 191; 8 L. T. 7	75, 251, 464 528 361, 367 100 252, 297 422, 493 704, 20 168 15; 58 422 01; 192, 897
17 W. R. 414; affirming 37 L Moser, Re, 13 Q. B. D. 738; 33 V Moses v. Taylor, 11 W. R. 81 Moss v. Barton, 35 Beav. 197; 1 H Moss v. Gallimore, 1 Doug. 279 Moss v. James, 37 L. T. 715; 47 I Mostyn (Lord) v. Fitzsimmons, '02 A. C. 46; 71 L. J. K. B. 89; T. L. R. 134; 88 L. T. 7; 51 Mostyn v. Lancaster, 23 Ch. D. 58 31 W. R. 686	J. Q. B. 242 V. R. 16 L. J. Q. B. 184 J. Q. B. 184 J. K. B. 512 72 Ibid. 164 W. R. 257 18; 52 L. J. (R. 199, 281 1 C. P. D. 144 ; 7 Ex. 101	; 18 L. T. 85	791 3, 84, 247, 67, 224, . 595 B. 349; R. 191; 8 L. T. 7 C. P. 4 Ex. 62;	75, 251, 464 528 361, 367 100 252, 297 422, 493 704, 20 168 15; 58 422 01; 192, 897
17 W. R. 414; affirming 37 L Moser, Re, 13 Q. B. D. 738; 33 V Moses v. Taylor, 11 W. R. 81 Moss v. Barton, 35 Beav. 197; 1 I Moss v. Gallimore, 1 Doug. 279 Moss v. James, 37 L. T. 715; 47 I Mostyn (Lord) v. Fitzsimmons, '02 A. C. 46; 71 L. J. K. B. 89; T. L. R. 134; 88 L. T. 7; 51 Mostyn v. Lancaster, 23 Ch. D. 58 31 W. R. 686	Z. J. Q. B. 242 V. R. 16 Eq. 474; 18 I J. Q. B. 164 J. Q. B. 164 V. R. 257 18; 52 L. J. (R. 199, 281 1 C. P. D. 144 ; 7 Ex. 101	; 18 L. T. 85	791 3, 84, 247, 67, 224, 595 B. 349; R. 191; 8 L. T. 7 C. P. 4 Ex. 62;	75, 251, 464 528 361, 367 100 252, 297 422, 493 04, 20 168 15; 58 422 01; 192, 897 26 441, 442
17 W. R. 414; affirming 37 L Moser, Re, 13 Q. B. D. 738; 33 V Moses v. Taylor, 11 W. R. 81 Moss v. Barton, 35 Beav. 197; 1 I Moss v. Gallimore, 1 Doug. 279 Moss v. James, 37 L. T. 715; 47 I Mostyn (Lord) v. Fitzsimmons, '02 A. C. 46; 71 L. J. K. B. 89; T. L. R. 134; 88 L. T. 7; 51 Mostyn v. Lancaster, 23 Ch. D. 58 31 W. B. 686 Mostyn (Lord) v. Manger, 17 T. L. Mostyn v. West Mostyn Coal Co. 34 L. T. 325; 24 W. R. 401 Monle v. Garrett, L. R. 5 Ex. 132 L. T. 367; 20 W. R. 416 Mountjoy's (Lord) Case, 1 And. 304	J. Q. B. 242 V. R. 16 L. J. Q. B. 164 J. Q. B. 164 J. K. B. 512 72 Ibid. 164 W. R. 257 33; 52 L. J. C j. T. C. P. D. 144 j. T. Ex. 101 j. T. Ex. 101	; 18 L. T. 85	791 3, 84, 247, 67, 224, 595 B. 349; R. 191; 8 L. T. 7 C. P. 4 Ex. 62;	75, 251, 464 528 361, 367 100 252, 297 422, 493 '04, 20 168 15; 58 422 01; 192, 897 26 441, 442 215
17 W. R. 414; affirming 37 L Moser, Re, 13 Q. B. D. 738; 33 V Moses v. Taylor, 11 W. R. 81 Moss v. Barton, 35 Beav. 197; 1 I Moss v. Gallimore, 1 Doug. 279 Moss v. James, 37 L. T. 715; 47 I Mostyn (Lord) v. Fitzsimmons, '02 A. C. 46; 71 L. J. K. B. 89; T. L. R. 134; 88 L. T. 7; 51 Mostyn v. Lancaster, 23 Ch. D. 58 31 W. R. 686	J. Q. B. 242 V. R. 16 L. J. Q. B. 164 J. Q. B. 164 J. K. B. 512 72 Ibid. 164 W. R. 257 33; 52 L. J. C j. T. C. P. D. 144 j. T. Ex. 101 j. T. Ex. 101	; 18 L. T. 85	791 3, 84, 247, 67, 224, 595 B. 349; R. 191; 8 L. T. 7 C. P. 4 Ex. 62;	75, 251, 464 528 361, 367 100 252, 297 422, 493 '04, 20 168 15; 58 422 01; 192, 897 26 441, 442 215
17 W. R. 414; affirming 37 L Moser, Re, 13 Q. B. D. 738; 33 V Moses v. Taylor, 11 W. R. 81 Moss v. Barton, 35 Beav. 197; 1 H Moss v. Gallimore, 1 Doug. 279 Moss v. James, 37 L. T. 715; 47 I Mostyn (Lord) v. Fitzsimmons, '02 A. C. 46; 71 L. J. K. B. 89; T. L. R. 134; 88 L. T. 7; 51 Mostyn v. Lancaster, 23 Ch. D. 58 31 W. R. 636	Z. J. Q. B. 242 V. R. 16	; 18 L. T. 85	791 3, 84, 247, 67, 224, . 595 B. 349; R. 191; 8 L. T. 7 C. P. 4 Ex. 62; 17 17 Jur. 50	75, 251, 464 528 361, 367 100 252, 297 422, 493 '04, 20 168 15; 58 422 01; 192, 397 26 441, 442 215 8 77,
17 W. R. 414; affirming 37 L Moser, Re, 13 Q. B. D. 738; 33 V Moses v. Taylor, 11 W. R. 81 Moss v. Barton, 35 Beav. 197; 1 I Moss v. Gallimore, 1 Doug. 279 Moss v. James, 37 L. T. 715; 47 I Mostyn (Lord) v. Fitzsimmons, '02 A. C. 46; 71 L. J. K. B. 89; T. L. R. 134; 88 L. T. 7; 51 Mostyn v. Lancaster, 23 Ch. D. 58 31 W. R. 686 Mostyn (Lord) v. Manger, 17 T. L. Mostyn v. West Mostyn Coal Co. 1 34 L. T. 325; 24 W. R. 401 Moule v. Garrett, L. R. 5 Ex. 132 L. T. 367; 20 W. R. 416 Mountjoy's (Lord) Case, 1 And. 304 Mountnoy v. Collier, 1 E. & B. 630 Mousley v. Ludlam, 21 L. J. Q. B.	Z. J. Q. B. 242 V. R. 16	; 18 L. T. 85	791 3, 84, 247, 67, 224, .595 B. 349; R. 191; 8 L. T. 7 C. P. 4 Ex. 62; 17 17 Jur. 50	75, 251, 464 528 361, 367 100 252, 297 422, 493 04, 20 168 15; 53 422 01; 192, 897 26 441, 442 215 3 77, 236 534 340
17 W. R. 414; affirming 37 L Moser, Re, 13 Q. B. D. 738; 33 V Moses v. Taylor, 11 W. R. 81 Moss v. Barton, 35 Beav. 197; 1 F Moss v. Gallimore, 1 Doug. 279 Moss v. James, 37 L. T. 715; 47 I Mostyn (Lord) v. Fitzsimmons, '02 A. C. 46; 71 L. J. K. B. 89; T. L. R. 134; 88 L. T. 7; 51 Mostyn v. Lancaster, 23 Ch. D. 58 31 W. B. 686 Mostyn v. West Mostyn Coal Co. 12 Mostyn v. West Mostyn Coal Co. 13 34 L. T. 325; 24 W. R. 401 Moule v. Garrett, L. R. 5 Ex. 132 L. T. 367; 20 W. R. 416 Mountjoy's (Lord) Case, 1 And. 304 Mountoy v. Collier, 1 E. & B. 636 Mousley v. Ludlam, 21 L. J. Q. B. Moxon v. Townshend, 2 T. L. R. 7 Mucklestone v. Thomas, Willes, 14	L. J. Q. B. 242 V. R. 16 L. J. Q. B. 164, 1 K. B. 512 72 Ibid. 164 W. R. 257 W. R. 199, 281 1 C. P. D. 146 ; 7 Ex. 101 ; 7 Ex. 101 ; 4 Leon. 14 0; 22 L. J. Q	; 18 L. T. 85 2. T. 628 D; 38 L. T ; '03, 1 K. ; 19 T. L Ch. 848; 4 ; 41 L. J ; 41 L. J 7; Godb. 1. B. 124; 1107 192	791 3, 84, 247, 67, 224, . 595 B. 349; R. 191; 8 L. T. 7 C. P. 4 Ex. 62; 17 17 Jur. 50	75, 251, 464 528 361, 367 100 252, 297 422, 493 704, 20 168 15; 58 422 01; 192, 897 26 441, 442 215 3 77, 236 534 340 340 342
17 W. R. 414; affirming 37 L Moser, Re, 13 Q. B. D. 738; 33 V Moses v. Taylor, 11 W. R. 81 Moss v. Barton, 35 Beav. 197; 1 E Moss v. Gallimore, 1 Doug. 279 Moss v. James, 37 L. T. 715; 47 I Mostyn (Lord) v. Fitzsimmons, '02 A. C. 46; 71 L. J. K. B. 89; T. L. R. 134; 88 L. T. 7; 51 Mostyn v. Lancaster, 23 Ch. D. 58 31 W. R. 686 Mostyn v. West Mostyn Coal Co. 23 4 L. T. 325; 24 W. R. 401 Moule v. Garrett, L. R. 5 Ex. 132 L. T. 367; 20 W. R. 416 Mountjoy's (Lord) Case, 1 And. 304 Mountnoy v. Collier, 1 E. & B. 636 Mousley v. Ludlam, 21 L. J. Q. B. Moxon v. Townshend, 2 T. L. R. 7 Mucklestone v. Thomas, Willes, 14 Mullens v. Miller, 22 Ch. D. 194;	L. J. Q. B. 242 V. R. 16 L. J. Q. B. 164, 1 K. B. 512 72 Ibid. 164 W. R. 257 W. R. 199, 281 1 C. P. D. 146 ; 7 Ex. 101 ; 7 Ex. 101 ; 4 Leon. 14 0; 22 L. J. Q	; 18 L. T. 85 2. T. 628 D; 38 L. T ; '03, 1 K. ; 19 T. L Ch. 848; 4 ; 41 L. J ; 41 L. J 7; Godb. 1. B. 124; 1107 192	791 3, 84, 247, 67, 224, . 595 B. 349; R. 191; 8 L. T. 7 C. P. 4 Ex. 62; 17 17 Jur. 50	75, 251, 464 528 361, 367 100 252, 297 422, 493 204, 20 168 15; 58 422 01; 192, 897 26 441, 442 215 8 77, 236 534 340 342 31
17 W. R. 414; affirming 37 L Moser, Re, 13 Q. B. D. 738; 33 V Moses v. Taylor, 11 W. R. 81 Moss v. Barton, 35 Beav. 197; 1 H Moss v. Gallimore, 1 Doug. 279 Moss v. James, 37 L. T. 715; 47 I Mostyn (Lord) v. Fitzsimmons, '02 A. C. 46; 71 L. J. K. B. 89; T. L. R. 134; 88 L. T. 7; 51 Mostyn v. Lancaster, 28 Ch. D. 58 31 W. R. 686 Mostyn (Lord) v. Manger, 17 T. L. Mostyn v. West Mostyn Coal Co. 1 34 L. T. 325; 24 W. R. 401 Moule v. Garrett, L. R. 5 Ex. 132 L. T. 367; 20 W. R. 416 Mountjoy's (Lord) Case, 1 And. 304 Mountnoy v. Collier, 1 E. & B. 630 Mousley v. Ludlam, 21 L. J. Q. B. Moxon v. Townshend, 2 T. L. R. 7 Mucklestone v. Thomas, Willes, 14 Mullens v. Miller, 22 Ch. D. 194; W. R. 559	J. Q. B. 242 V. R. 16 Eq. 474; 13 I J. Q. B. 164, 1 K. B. 512 72 Ibid. 164 W. R. 257 18; 52 L. J. (R. 199, 281 1 C. P. D. 144 ; 7 Ex. 101 ; 7 Ex. 101 ; 7 Ex. 101 ; 17; 3 Ibid. 8 466 52 L. J. Ch	7; 18 L. T. 85	791 3, 84, 247, 67, 224, 595 B. 349; R. 191; 8 L. T. 7 C. P. 4 Ex. 62; 17 17 Jur. 50	75, 251, 464 528 361, 367 100 252, 297 422, 493 204, 20 168 15; 58 422 01; 192, 897 26 441, 442 215 8 77, 236 534 340 342 81 119
17 W. R. 414; affirming 37 L Moser, Re, 13 Q. B. D. 738; 33 V Moses v. Taylor, 11 W. R. 81 Moss v. Barton, 35 Beav. 197; 1 E Moss v. Gallimore, 1 Doug. 279 Moss v. James, 37 L. T. 715; 47 I Mostyn (Lord) v. Fitzsimmons, '02 A. C. 46; 71 L. J. K. B. 89; T. L. R. 134; 88 L. T. 7; 51 Mostyn v. Lancaster, 23 Ch. D. 58 31 W. R. 686 Mostyn v. West Mostyn Coal Co. 23 4 L. T. 325; 24 W. R. 401 Moule v. Garrett, L. R. 5 Ex. 132 L. T. 367; 20 W. R. 416 Mountjoy's (Lord) Case, 1 And. 304 Mountnoy v. Collier, 1 E. & B. 636 Mousley v. Ludlam, 21 L. J. Q. B. Moxon v. Townshend, 2 T. L. R. 7 Mucklestone v. Thomas, Willes, 14 Mullens v. Miller, 22 Ch. D. 194;	J. Q. B. 242 V. R. 16 Eq. 474; 13 I J. Q. B. 164, 1 K. B. 512 72 Ibid. 164 W. R. 257 18; 52 L. J. (R. 199, 281 1 C. P. D. 144 ; 7 Ex. 101 ; 7 Ex. 101 ; 7 Ex. 101 ; 17; 3 Ibid. 8 466 52 L. J. Ch	7; 18 L. T. 85	791 3, 84, 247, 67, 224, 595 B. 349; R. 191; 8 L. T. 7 C. P. 4 Ex. 62; 17 17 Jur. 50 a. T. 103; R. 132	75, 251, 464 528 361, 367 100 252, 297 422, 493 04, 20 168 15; 53 422 01; 192, 897 26 441, 442 215 3 77, 236 584 340 342 31 119 167,
17 W. R. 414; affirming 37 L Moser, Re, 13 Q. B. D. 738; 33 V Moses v. Taylor, 11 W. R. 81 Moss v. Barton, 35 Beav. 197; 1 E Moss v. Gallimore, 1 Doug. 279 Moss v. James, 37 L. T. 715; 47 I Mostyn (Lord) v. Fitzsimmons, '02 A. C. 46; 71 L. J. K. B. 89; T. L. R. 134; 88 L. T. 7; 51 Mostyn v. Lancaster, 23 Ch. D. 58 31 W. B. 686 Mostyn v. West Mostyn Coal Co. 23 4 L. T. 325; 24 W. R. 401 Moule v. Garrett, L. R. 5 Ex. 132 L. T. 367; 20 W. R. 416 Mountjoy's (Lord) Case, 1 And. 304 Mountnoy v. Collier, 1 E. & B. 636 Mousley v. Ludlam, 21 L. J. Q. B. Moxon v. Townshend, 2 T. L. R. 7 Mucklestone v. Thomas, Willes, 14 W. R. 559 Mullers v. Miller, 22 Ch. D. 194; W. R. 559 Muller v. Trafford, '01, 1 Ch. 54;	J. Q. B. 242 V. R. 16 L. J. Q. B. 164 J. Q. B. 164 J. J. Q. J. Q. 164 J. J. Ch. 70 J. J. Ch. 7	; 18 L. T. 85 2. T. 628 3; 38 L. T; '03, 1 K. ; 19 T. L 6; 45 L. J 7; Godb. 1. B. 124; 1107 380; 48 I 380; 48 I.	791 3, 84, 247, 67, 224, .595 B. 349; R. 191; 8 L. T. 7 C. P. 4 Ex. 62; 17 17 Jur. 50 T. 108; R. 132 434, 436,	75, 251, 464 528 361, 367 100 252, 297 422, 493 704, 20 168 15; 58 422 01; 192, 397 26 441, 442 215 38 77, 236 584 340 340 119 167, 445, 446
17 W. R. 414; affirming 37 L Moser, Re, 13 Q. B. D. 738; 33 V Moses v. Taylor, 11 W. R. 81 Moss v. Barton, 35 Beav. 197; 1 H Moss v. Gallimore, 1 Doug. 279 Moss v. James, 37 L. T. 715; 47 I Mostyn (Lord) v. Fitzsimmons, '02 A. C. 46; 71 L. J. K. B. 89; T. L. R. 134; 88 L. T. 7; 51 Mostyn v. Lancaster, 23 Ch. D. 58 31 W. R. 636 Mostyn (Lord) v. Manger, 17 T. L. Mostyn v. West Mostyn Coal Co. 134 L. T. 325; 24 W. R. 401 Moule v. Garrett, L. R. 5 Ex. 132 L. T. 367; 20 W. R. 416 Mountjoy's (Lord) Case, 1 And. 304 Mountnoy v. Collier, 1 E. & B. 630 Mousley v. Ludlam, 21 L. J. Q. B. Moxon v. Townshend, 2 T. L. R. 7 Mucklestone v. Thomas, Willes, 14 Mullens v. Miller, 22 Ch. D. 194; W. R. 559	J. Q. B. 242 V. R. 16 J. Q. B. 164 R. 199, 281 I. C. P. D. 144 J. Tex. 101 J. Tex. 101 J. Tex. 101 J. Tex. 101 J. Ch. J. Ch. 7 J. Ch. 7 J. S. J. Ch. 7 J. J. Ch. 7 J. S. J. Ch. 7 J. S. J. Ch. 7 J. S. J. Ch. 7 J. J. J. J. Ch. 7 J. J. J. J. Ch. 7 J. J. J. J. L. J. Ch. 7 J. J. J. J. L. J. Ch. 7 J. J. J. J. L. L. J. Ch. 7 J. J. J. J. J. L.	; 18 L. T. 85	791 3, 84, 247, 67, 224, .595 B. 349; R. 191; 8 L. T. 7 C. P. 4 Ex. 62; 17 17 Jur. 50 T. 103; R. 132 434, 436, 88 W. R.	75, 251, 464 528 361, 367 100 252, 297 422, 493 204, 20 168 15; 53 422 01; 192, 397 26 441, 442 215 38 77, 236 534 340 340 119 167, 445, 446 716 85
17 W. R. 414; affirming 37 L Moser, Re, 13 Q. B. D. 738; 33 V Moses v. Taylor, 11 W. R. 81 Moss v. Barton, 35 Beav. 197; 1 H Moss v. Gallimore, 1 Doug. 279 Moss v. James, 37 L. T. 715; 47 I Mostyn (Lord) v. Fitzsimmons, '02 A. C. 46; 71 L. J. K. B. 89; T. L. R. 134; 88 L. T. 7; 51 Mostyn v. Lancaster, 23 Ch. D. 58 31 W. R. 636 Mostyn (Lord) v. Manger, 17 T. L. Mostyn v. West Mostyn Coal Co. 134 L. T. 325; 24 W. R. 401 Moule v. Garrett, L. R. 5 Ex. 132 L. T. 367; 20 W. R. 416 Mountjoy's (Lord) Case, 1 And. 304 Mountnoy v. Collier, 1 E. & B. 630 Mousley v. Ludlam, 21 L. J. Q. B. Moxon v. Townshend, 2 T. L. R. 7 Mucklestone v. Thomas, Willes, 14 Mullens v. Miller, 22 Ch. D. 194; W. R. 559	J. Q. B. 242 V. R. 16 J. Q. B. 164 R. 199, 281 I. C. P. D. 144 J. Tex. 101 J. Tex. 101 J. Tex. 101 J. Tex. 101 J. Ch. J. Ch. 7 J. Ch. 7 J. S. J. Ch. 7 J. J. Ch. 7 J. S. J. Ch. 7 J. S. J. Ch. 7 J. S. J. Ch. 7 J. J. J. J. Ch. 7 J. J. J. J. Ch. 7 J. J. J. J. L. J. Ch. 7 J. J. J. J. L. J. Ch. 7 J. J. J. J. L. L. J. Ch. 7 J. J. J. J. J. L.	; 18 L. T. 85	791 3, 84, 247, 67, 224, .595 B. 349; R. 191; 8 L. T. 7 C. P. 4 Ex. 62; 17 17 Jur. 50 T. 103; R. 132 434, 436, 88 W. R.	75, 251, 464 528 361, 367 100 252, 297 422, 493 204, 20 168 15; 58 422 01; 192, 897 26 441, 442 215 8 77, 236 534 340 342 81 119 167, 445, 446 716 85 364
17 W. R. 414; affirming 37 L Moser, Re, 13 Q. B. D. 738; 33 V Moses v. Taylor, 11 W. R. 81 Moss v. Barton, 35 Beav. 197; 1 I Moss v. Gallimore, 1 Doug. 279 Moss v. James, 37 L. T. 715; 47 I Mostyn (Lord) v. Fitzsimmons, '02 A. C. 46; 71 L. J. K. B. 89; T. L. R. 134; 88 L. T. 7; 51 Mostyn v. Lancaster, 23 Ch. D. 58 31 W. R. 686 Mostyn (Lord) v. Manger, 17 T. L. Mostyn v. West Mostyn Coal Co. 1 34 L. T. 325; 24 W. R. 401 Moule v. Garrett, L. R. 5 Ex. 132 L. T. 367; 20 W. R. 416 Mountjoy's (Lord) Case, 1 And. 304 Mountnoy v. Collier, 1 E. & B. 636 Mousley v. Ludlam, 21 L. J. Q. B. Moxon v. Townshend, 2 T. L. R. 7 Mucklestone v. Thomas, Willes, 14 Mullens v. Miller, 22 Ch. D. 194; W. R. 559 Muller v. Trafford, '01, 1 Ch. 54; Mumford v. Collier, 25 Q. B. D. 27 Mumford v. Walker, 71 L. K. B. 19 Mumford v. Dennis, 1 H. & N. 216	J. Q. B. 242 V. R. 16 L. J. Q. B. 164 J. Q. B. 164 J. R. B. 512 72 Ibid. 164 W. R. 257 13; 52 L. J. (R. 199, 281 1 C. P. D. 144 J. T. Ex. 101 4; 4 Leon. 14 0; 22 L. J. Q 64; 15 Jur. 70 L. J. Ch. 79; 59 L. J. Ch. 79; 59 L. J. Ch. 179; 59 L. J. Ch. 179; 55 L. J. Ch.	; 18 L. T. 85	791 3, 84, 247, 67, 224, 595 B. 349; R. 191; 8 L. T. 7 C. P. 4 17 17 Jur. 50 18 L. 132 434, 436, 38 W. R. L. R. 80	75, 251, 464 528 361, 367 100 252, 297 422, 493 04, 20 168 15; 422 01; 192, 897 26 441, 442 215 3 77, 236 584 340 342 31 119 167, 445, 446 716 85 364 585
17 W. R. 414; affirming 37 L Moser, Re, 13 Q. B. D. 738; 33 V Moses v. Taylor, 11 W. R. 81 Moss v. Barton, 35 Beav. 197; 1 I Moss v. Gallimore, 1 Doug. 279 Moss v. James, 37 L. T. 715; 47 I Mostyn (Lord) v. Fitzsimmons, '02 A. C. 46; 71 L. J. K. B. 89; T. L. R. 134; 88 L. T. 7; 51 Mostyn v. Lancaster, 23 Ch. D. 58 31 W. R. 686 Mostyn (Lord) v. Manger, 17 T. L. Mostyn v. West Mostyn Coal Co. 1 34 L. T. 325; 24 W. R. 401 Moule v. Garrett, L. R. 5 Ex. 132 L. T. 367; 20 W. R. 416 Mountjoy's (Lord) Case, 1 And. 804 Mountnoy v. Collier, 1 E. & B. 636 Mousley v. Ludlam, 21 L. J. Q. B. Moxon v. Townshend, 2 T. L. R. 7 Mucklestone v. Thomas, Willes, 14 Mullens v. Miller, 22 Ch. D. 194; W. R. 559	J. Q. B. 242 V. R. 16 L. J. Q. B. 164 J. Q. B. 164 J. R. B. 512 72 Ibid. 164 W. R. 257 13; 52 L. J. (R. 199, 281 1 C. P. D. 144 J. T. Ex. 101 4; 4 Leon. 14 0; 22 L. J. Q 64; 15 Jur. 70 L. J. Ch. 79; 59 L. J. Ch. 79; 59 L. J. Ch. 179; 59 L. J. Ch. 179; 55 L. J. Ch.	; 18 L. T. 85	791 3, 84, 247, 67, 224, 595 B. 349; R. 191; 8 L. T. 7 C. P. 4 17 17 Jur. 50 18 L. 132 434, 436, 38 W. R. L. R. 80	75, 251, 464 528 361, 367 100 252, 297 422, 493 04, 20 168 15; 422 01; 192, 897 26 441, 442 215 3 77, 236 584 340 342 31 119 167, 445, 446 716 85 364 585

						_	
Mundy v. Jolliffe, 5 My. & Cr. 16	7						AGE 112
Mundy v. Johne, 5 My. & Cr. 16 Mundy v. Duke of Rutland, 23 C.	D. 81	: 46 L.	T. 477	7 : 31 '	W. R. !	510.	140
Municipal Building Society v. Sm	ith, 22	Q. B.	D. 70;	58 L	. J. Q.	В.	
61 : 37 W. R. 42						67.	252
Municipal Freehold Land Co. v.	. Metro	politan	, &c.,	Joint	Commi	ttee,	
C. & E. 184	•••	•••	•••	•••	•••	•••	85
Munn v. Godbold, 3 Bing. 292		• • •		•••			181
Murgatroyd v. Old Silkstone, &c.,	COMIC						83
	239	•••	•••	•••	•••	•••	350
Murphy v. Daly, 13 Ir. C. L. R. Murray v. Hall, 7 C. B. 455		•••	•••		•••		63
Murray v. Parker, 19 Beav. 305	•••	•••	•••	•••	•••	•••	192
Murrell v. Fysh, C. & E. 80			•••	•••		•••	443
Musgrave v. Horner, 31 L. T. 632	2;23 V	V. R. 1	25	•••	•••	•••	378
Muskerry v. Chinnery, Ll. & Goo.					00 010	01.4	53
Muskett v. Hill, 5 Bing. N. C. 68 Muspratt v. Gregory, 1 M. & W.	839 · 9	Thid A	77		88, 213 57, 258	, 214, 950	980
Entaphace v. orogory, 1 M. d. W.	000, 0	1000.	,,,	2	57, 258	, 200,	200
Nargett v. Nias, 1 E. & E. 439;	28 L. J.	. Q. B.					
Nash v. Cochrane, 3 Jur. 978 Nash v. Gray, 2 F. & F. 391	•••		•••	•••	•••		416
Nash v. Gray, 2 F. & F. 391 Nash v. Lucas, 8 B. & S. 581; L.	B.0 V	R 50	0 . 10	T. 7F 4	10	988	222
Mach a Dalman K M & Q 974		. D. 99	U; 10.	 		288,	399
Nash v. Spencer. 13 T. L. R. 78		•••	•••	•••	•••	•••	331
Nash v. Spencer, 13 T. L. R. 78 Nation v. Tozer, 1 Cr. M. & R. 1	72	•••	•••	•••	•••		452
National Savings Bank Association	on, Re,	Brady'	s Case,	15 W	. R. 75	3	118
National Telephone Co. v. Com	mission	ers of	Inland	l Reve	nue, '9	9, 1	
Q. B. 250; 68 L. J. Q. B.	222; 7	9 L. T	. 514;	47 W	7. R. 2	47	85,
Naylor v. Arnitt, 1 Russ. & M. 5	Δ1						176
Naulos a Collings 1 Tount 10		•••	•••	•••	•••	941	58 530
Neale v. Mackenzie, 1 M. & W. 7	747: 2	Cr. M.	& R. 8	4	191	, 239,	
Neale v. Mackenzie, 1 Keen, 474 Neale v. Parkin, 1 Esp. 229	•••	•••	•••	•••	•••		117
Neale v. Parkin, 1 Esp. 229		··· -		•••	•••	•••	136
Neale v. Ratcliffe, 15 Q. B. 916	; 20 L	. J. Q.	B. 13	10; 15	Jur. 1	66	
Manla Wallia O D & C 590							843
Neale v. Wyllie, 3 B. & C. 533 Neave v. Moss, 1 Bing. 360	•••	•••	•••	•••	•••	•••	417 77
Negus, Re, '95, 1 Ch. 73; 64 L.	J. Ch. 2	79 · 71	LT.	718 · 4	3 W. I	88 5	"
210,000, 100, 100, 101, 01 11.		,	2	, .			189
Nelson v. Liverpool Brewery Co.,	2 C. P	. D. 31	1;46	L. J.	C. P.		
25 W. R. 877		•••	•••				335
Nesham v. Selby, 13 Eq. 191; 7	Ch. 400	8; 41 I	J. C	h. 551	; 26 L	. T.	
568 Ness a Stephenson 0.0 R 1) 9	45	•••	•••	•••	100	, 103,	
Ness v. Stephenson, 9 Q. B. D. 2	540 52	•••	•••	•••	•••	•••	269 510
Newby z. Eckersley. '99. 1 O. B.	. 465 :	68 L. J	J. Ö. 1	B. 261	: 80 I	. T.	310
Ness v. Stephenson, 9 Q. B. 1). 2 Newbolt v. Bingham, 72 L. T. 80 Newby v. Eckersley, '99, 1 Q. B. 314; 47 W. R. 245	•••	•••	•••	•••	•••	•••	542
Newby v. Harrison, 1 J. & H. 38	3;4L.	T. 397	'; 9 W	. R. 84	9; affi	rıned	
4 L. T. 424	;; ,					:::	86
Newby r. Sharpe, 8 Ch. D. 39;	47 L. J	. Ch.	617; 8	88 L.	T. 583	; 26	007
W. R. 685 Newcastle's Estates, Re Duke of	94 Ch	 D 19	0 50	T. T	Ch 845	. 48	237
L. T. 779; 31 W. R. 782	, 	12			uzo	, 10	4
New City Constitutional Club Co	., Re. E	x parte	Purss	ell, 34	Ch. D.	646 :	-
56 L. J. Ch. 332; 56 L. T.	792 ; 3	5 Ŵ. R.	421	•••		•••	328
Newcomb v. Harvey, Carth. 161	•••	•••	•••	•••	•••	•••	415
Newcomen v. Colson, 5 Ch. D. 1	3 3 ; 46	L. J. (Ch. 459	ð; 86	L. T.	385 ;	
25 W. R. 469	. '00 1	Ch o	0	T. "T	Ch		134
Newell and Nevill's Contract, Re L. T. 581; 48 W. R. 181	, 00, 1	OII. 9	0,08	11. J.	OII. 94	, 01	197
Newitt, Ex parte, 16 Ch. D. 522	2: 51 T	. j. c	h. 381	: 44	L. T. 5	: 29	191
W. R. 344		•••	•••	,	•••	,	500
_					e	2	

							2402
Newman, Re, 2 Ch. 707; 36 L. J.	Ch.	843 ; 17	7 L. T	'. 128 ; 	15 W.		PAGE 188
Newman, Re, 2 Ch. 707; 36 L. J. 1189 Newman v. Anderton, 2 B. & P. N Newman v. Maxwell, 80 L. T. 681 Newmarch v. Brandling, 3 Swanst	7. R. 2	24	•••	•••	•••	•••	218 380
Newmarch v. Brandling, 3 Swanst New Oriental Bank Corporation, I	. 99	 Re '95.	1.Ch				2
439; 72 L. T. 419; 43 W. R. Newport v. Hardy, 2 Dowl. & L. S.	. 523	•••	•••	•••	•••	•••	329
Newsome v. Graham, 10 B. & C. 2		1 2. 0.	ų. D.	,	o our.	236,	238 226
Newson v. Smythies, 3 H. & N. 84	0;11	F. & F.	477; 5	28 L. J	Ex. 97		159, 533
Newton v. Allin, 1 Q. B. 518; 10 Newton v. Harland, 1 M. & Gr. 6	L. J.	Q. B. 17 Sc. N. 1	79;6 R. 473	Jur. 99 : 2 Ju	 r. 350		
Newton v. Lucas, cited 10 Beav. 5 Newton v. Nock, 43 L. T. 197	43	•••		•••	•••	209,	58
Newton v. Scott, 9 M. & W. 434; Newton v. Wilmot, 8 M. & W. 711 Niblet v. Smith 4 T. R. 504	10 Th	id. 471	; 11 L	. J. Ex	. 121	403,	326
Niblet v. Smith, 4 T. R. 504 Nicholson v. Smith, 22 Ch. D. 640							308
W. R. 471 Nickells v. Atherstone, 10 Q. B. 9	 44 : 16	 3 L. J. (Q. B. 8	 371 : 13	 l Jur. 7	167, 78	168 490
Nicoll v. Fenning, 19 Ch. D. 258; W. R. 95	51 L.	J. Ch.	166;	45 Ĺ. '	Г. 73 8 ;	30	360
Nicolls v. Corbett, 34 Beav. 376	•••	•••		•••	•••	•••	58 400
Nind r. Nineteenth Century Buil L. J. Q. B. 636; 70 L. T. 831	ding 8	Society, W. R.	'94, 181	2 Q. I	3. 226 ; 	63	508
Noakes v. Rice, '02, A. C. 24;	, 28 L 71 L.	J. Ch.	139;	86 L.	T. 72 ;	50	284
W. R. 305; 66 J. P. 147; aft 445; 69 L. J. Ch. 635; 82 L.	irming T. 78	;, '00, 1 4 ; 48 `	Ch. 21 W. R.	8, and 629	'00, 2	Ch.	163
445; 69 L. J. Ch. 635; 82 L. Noke v. Awder, Cro. Eliz. 373, 43 Nokes's Case, 4 Rep. 80 b	6	•••	•••	•••	•••	•••	435 399
Nokes v. Gibbon, 3 Drew. 681; 26	3 L. J.	Ch. 43	3 ; 3 J	ur. N.	S. 726		432 837
Nordenfelt v. Maxim-Nordenfelt (Norman v. Ricketts, 3 T. L. R. 18		C.		•••	•••	•••	357 243
Norris v. Catmur, C. & E. 576 Norris v. Craig, 64 L. J. Q. B. 432 North v. Percival, '98, 2 Ch. 128;	; 43	W. R. 4	180	 70 T /	 P 815		335 415
TAT D KEO						104	109 213
Northam v. Bowden, 11 Exch. 70 Northcote v. Doughty, 4 C. P. D. North Eastern Ry. Co. v. Lord He	385		 9	20 D. 30 · 69	I. J	Ch	7
516; 82 L. T. 429; 16 T. L. North London Freehold Land Co.							446
283 Northumberland Avenue Hotel Co	•••	- 		•••		•••	507 95,
Northumberland, Duke of v. Errin				•••	•••		122
North Western Ry. Co. v. M'Mich Northwick v. Stanway, 8 B. & P.	ael, 5 346	Ex. 114	ł	•••	•••	7	, 10 64
North Yorkshire Iron Co., Re, 7 L. T. 143; 26 W. R. 367							327
Norton v. Dashwood, '96, 2 Ch. 48 44 W. R. 680		L. J. (Ch. 787	7; 75	L. T. 2 	05;	525
Norton v. Herron, 1 C. & P. 648 Norval v. Pascoe, 34 L. J. Ch. 82	•••	•••	•••	; 10 1	L. T. 8	09;	72
Norwood (Overseers of) v. Salter, 's	92, 2	Q. B. 11	8 ; 6 1	L. J. 1	13, 214, M. C. 1	93 ; `	
67 L. T. 876 Nottingham Brick Co. v. Butler, 57 L. J. Q. B. 280; 54 L. T.	 15 Q. 444 · 9	B. D.	 261 ; 1 2. 405	16 Q. 1	B. D. 7	78;	384 439
	, .					•••	-50

						P	AGE
Novello v. Toogood, 1.B. & C. 554	4	·i.	•••	•••	•••	•••	266
Noye v. Reed, 1 Man. & Ry. 63	97	•••	•••	•••	•••	•••	377
Nugent v. Kirwan, 1 Jebb. & Sv. 9			•••	•••	•••	•••	260
Nunn v. Fabian, 1 Ch. 35; 35 I	. J. C	h. 140	; 11 3	Jur. N. S	3. 868	; 13	
L. T. 343	•••	•••		•••	•••	111,	112
Nuttall v. Staunton, 4 B. & C. 51	•••	•••	•••	•••	•••		277
·							
Oslesania a Comona AM D 981							471
Oakapple v. Copous, 4 T. R. 361	· · · · · ·	····	D 0	. 11 1	m	. 14	471
Oakley v. Monck, L. R. 1 Ex. 18	9; 35	L. J. 1	CX. 0/				
W. R. 406; 4 H. & C. 251	D	T	T 'OL	700,	96, 97,	518,	527
Oak Pits Colliery Co., Re, 21 Ch.	D. 322	; 51 1.	J. Ch	1. 708;4	1/ L. T	. 7;	
30 W. R. 759		. .	~``B	405 0	- · · · ·	•••	827
Oastler v. Henderson, 2 Q. B. D.	070; 4	о 1. ј.	ູບ. B.	-			488
Oates r. Frith, Hob. 130; 2 Rol.	ADT. 44	17, pr.	ð	~:·· ~	•••	152,	220
Oceanic Steam Navigation Co.	v. Suti	erberr	y, 16	Ch. D	. 236 ;	- 50	
L. J. Ch. 308; 43 L. T. 743;	29 W	. K. 11	3		57,		, 62
O'Connell's Estate, Re, '03, 1 Ir. O'Connor v. Spaight, 1 Sch. & Lef	K. 154	•••	•••	•••	•••	•••	46
O'Connor v. Spaight, 1 Sch. & Let	. 305	•••		•••	•••	•••	106
Odell v. Wake, 3 Camp. 394	•••		····	•••	•••	•••	440
O'Donoghue v. Coalbrook, &c., Co	., 26 L	. T. 80	6	•••	•••	•••	234
Ogilvie v. Foljambe, 8 Mer. 53	•••	•••	•••	•••	•••	109,	
CIMILU S CASC, D INCD. IIU a	•••	•••	•••	•••	•••	•••	532
Oldershaw v. Holt, 12 A. & E. 590); 4 Ju	r. 1012	· ···			•••	346
Oliver v. Hunting, 44 Ch. D. 205	; 59 L	. J. Ch	. 255 ;	62 L.	r. 108 ;	; 38	
W. R. 618			•••	_ :	•••	•••	107
Olley v. Fisher, 34 Ch. D. 367;	56 L.	J. Ch.	208;	55 L. T	. 807 ;	35	
W. R. 301	•••	•••	•••	•••	•••	• • •	120
Omerod v. Hardman, 5 Ves. 722	•••	_ •••	•••	•••	•••	•••	127
Onions v. Cohen, 2 Hem. & M. 354	1;34	L. J. C	h. 338		•••	•••	400
Onslow v. Anon., 16 Ves. 178	•••	•••	•••	•••	•••	368,	869
Onslow v. Anon., 16 Ves. 173 Onslow v. Corrie, 2 Madd. 330	•••	•••	•••	•••	•••	440,	455
Oppenheim v. British, &c. Investr	ient Ba	ınk, 6 (Ch. D.	. 744 ; 4	в I. J.	Ch.	
882; 37 L. T. 629; 26 W. R. Openshaw v. Evans, 50 L. T. 156	391	•••	•••	•••	•••	•••	329
Openshaw v. Evans, 50 L. T. 156	•••	•••	•••	•••	•••	•••	340
Opperman v. Smith, 4 D. & Ry. 33	3	•••	•••	•••	•••	274,	275
Orby v. Mohun, Gilb. Eq. R. 45	•••	•••	•••	•••	•••	•••	51
Openshaw v. Evans, 50 L. T. 156 Opperman v. Smith, 4 D. & Ry. 35 Orby v. Mohun, Gilb. Eq. R. 45 Orgill v. Kemshead, 4 Taunt. 642 Organo (Lord) v. Anderson, 2 Bal	•••	•••	•••	•••	•••	•••	441
Cimona (Lora) V. Anacison, 2 Dai	w <i>D</i> .	000.	12 R.	R . 103	•••	•••	117
Ormond v. Hutchinson, 16 Ves. 94 Osborn v. D. of Marlborough, 14		•••	•••	•••	•••	•••	78
Osborn v. D. of Marlborough, 14	L. T.	789;	12 Ju	ır. N. S	. 559 ;	14	
W. K. 886						•••	41
Osborne v. Bradley, '03, 2 Ch. 446	; 73 I	. J. Cl	h. 49 ;	89 L. 7	r. 11	•••	439
Osborne v. Wise, 7 C. & P. 761				•••		127,	128
Our Boys' Clothing Co. v. Holborn	, &c.,	Co., 12	T. L.	R. 344	•••	•••	862
Outram v. Maude, 17 Ch. D. 391;	50 L.	J. Ch.	783;	29 W. I	₹. 818	•••	564
Owen v. Legh. 3 B. & A. 470	•••	•••	•••	•••	•••	•••	306
Owens v. Wynne, 4 E. & B. 579	•••	•••	•••	•••	•••	•••	288
Oxford, Mayor of v. Crow, '93, 3 C	h. 585	; 69 L	. T. 2	28; 42	W. R.	200	22,
							116
Oxford v. Provand, L. R. 2 P. C. 1	136	•••	•••	•••	•••	116,	119
Oxley v. James, 13 M. & W. 209;	13 L.	J. Ex.	358	•••	94,		
Packer v. Gibbins, 1 Q. B. 421; 10	1. T	O R	224 •	5 Jur 1	036	•••	285
Paddington Charities, Re, 8 Sim. 6	29 . 7	Ľ Í Ó	h. 44	· 2 In-	344	•••	84
Paddock v. Findlay, 1 Cr. & J. 90			л. 44			•••	127
Padwick n King 90 I. I M C 4	2	•••		•••	•••		408
Padwick v. King, 29 L. J. M. C. 4 Page v. Broom, 3 Beav. 36 Page v. Moore, 15 Q. B. 684			•••	•••	•••	•••	121
Page n Moore 1KA R 484	•••	•••	•••			470,	
Page v. Norfolk, 70 L. T. 23, 781	•••	•••	•••	•••	•••	410,	105
Page v. Stedman Carth 284	•••	•••		•••	•••		256
Page v. Stedman, Carth. 364 Page v. Vallis, 19 T. L. R. 393	•••	•••	•••		•••		268
Paget's Settled Estates, Re, 30 Ch	1) 14	 81 · 65	тт	Ch 42	 58 T.	 Т	200
on · 99 W P goe		,, ,,	11. V.	JII. 72 ;	90 II.		47

							AGE:
Paget v. Marshall, 28 Ch. D. 255;	54 L.	J. Ch.	575 ;		r. 351 ;	33	192
W. R. 608 Pain v. Coombs, 1 De G. & J. 34;	3 Jur.	N. S.	347	•••	•••	•••	112
Palfrey v. Baker, 3 Price, 572	•••	•••	•••	•••	•••	•••	242
				 07 T T	B	···	320
Palmer & Co. and Hosken & Co., R 77 L. T. 850; 46 W. R. 49							549
Palmer v. Bramley, '95, 2 Q. B. 4	05;65	L. J.	Q. B.	12; 73	L. T. 8	329	242
Palmer v. Earith, 14 M. &. W. 428	; 14 I	J. E	. 256	•••	•••	•••	387
Palmer v. Edwards, I Dougl. 187, 1	n. n	•••		•••	•••	75	415 , 76
Palmer v. Earith, 14 M. &. W. 428 Palmer v. Earith, 14 M. &. W. 428 Palmer v. Edwards, 1 Dougl. 187, 1 Palmer v. Johnson, 13 Q. B. D. 35	1;58	ւ J. Q	. B. 34	8;51 J	L. T. 21	11;	,
33 W. R. 86 Palmer v. Thorpe, Cro. Eliz. 152 Pannel v. Mill, 8 C. B. 625; 16 L. Pannell v. City of London Brew. 244; 82 L. T. 53; 48 W. R. 2 Panthey Lead Co. Re. 296, 1 Ch.	•••	•••	•••	•••	•••	•••	115
Palmer v. Thorpe, Cro. Eliz. 152	i''o r	2 01	•••	•••	•••	•••	191 142
Pannell v. City of London Brewe	erv Co.	. 700. 1	 Ch. 4	S6 : 69	L. J. (Ch.	112
244; 82 L. T. 53; 48 W. R. 2	264 ; 16	5 T. Ĺ.	R. 152	•••		<u></u>	508
Tamblet Dead Co., Me, 80, 1 Ch	,	00 14	U. CII.	100,	22 11.	40.	829
573 Panton v. Isham, 3 Lev. 359	•••	•••	•••	•••	···· ·	•••	352
Panton v. Jones, 3 Camp. 872						77.	479
Papé v. Westmacott, '94, 1 Q. B. 2	72 ; 63	L. J. (Q. B. 2	2 2 ; 70	L. T.	18;	0.49
42 W. R. 131 Papillon v. Brunton, 5 H. & N. 51 Paradine v. Jane, Aleyn, 26 Paramour v. Vardley, Plowd. 539 Pargeter v. Harris, 7 Q. B. 708; Parish v. Sleeman, 1 D. F. & J. 32 8 W. R. 166	8 . 90	 L. J. R	 v 265	•••	•••	•••	248 478
Paradine v. Jane. Alevn. 26	•••			•••	•••	•••	
Paramour v. Vardley, Plowd. 539	··· -		•••	···_		.•••	451
Pargeter v. Harris, 7 Q. B. 708;	15 L. J	. Q. B.	118;	10 Jur.	260 N G 9	 PK .	75
8 W. R. 166	10;29	u. J. C.		o Jur.	N. B. 6. 155.	386.	388
Parker v. Harris, 1 Salk. 262	•••	•••	•••	•••		•••	151
8 W. R. 166 Parker v. Harris, 1 Salk. 262 Parker v. Manning, 7 T. R. 537 Parker v. Taswell, 2 De G. & J. 1008		·"·	 Ob 0	10.4	N	ູ 75	, 76
1006		/ L. J.	. Cn. 8	12;4	Jur. N.	116,	125
Parker v. Webb, 3 Salk. 5 Parker v. Whyte, 1 Hem. & M. 16	•••	•••	•••	•••	•••		435
Parker v. Whyte, 1 Hem. & M. 16	7; 32	L. J. C	h. 520	; 8 L.	T. 446 ;	11	
W. R. 683 Parkinson v. Potter, 16 Q. B. D.	159 •	55 T.		 R 153	· 58 T.	 Т	440
818 ; 34 W. R. 215	. 102,		w.		, <i>00 1</i> .		388
Parmenter v. Webber, 8 Taunt. 59	3		•••	•••	•••	220,	415
Parrott v. Anderson, 7 Ex. 98; 21	L. J.	Ex. 291	•••	•••	•••	177	242 178
Parry v. Duncan. 7 Bing. 243	•••	•••		•••	274,	275.	312
Parry and Herbert's Case, 4 Leon.	5	•••	•••	•••	•••	-:-,	421
Parkinson v. Potter, 16 Q. B. D. 818; 34 W. R. 215 Parmenter v. Webber, 8 Taunt. 59 Parrott v. Anderson, 7 Ex. 93; 21 Parry v. Deere, 5 A. & E. 551 Parry v. Duncan, 7 Bing. 243 Parry and Herbert's Case, 4 Leon. Parry v. House, Holt, N. P. 485 Parsons v. Gingell, 4 C. B. 545; 1	•••	•••	•••	•••	•••	•••	19 75
Parry v. House, Holt, N. P. 489 Parsons v. Gingell. 4 C. R. 545: 1	6 L. J.	 С. Р.	227 : 1	1 Jur.	437	259,	260
D							E17
Partington, Re, Reigh v. Kane, 'C. L. T. 194; 50 W. R. 388; 18 Partridge v. Ball, 1 Ld. Raym. 130 Partridge v. Naylor, Cro. Eliz. 480 Pascoe v. Pascoe, 3 Bing. N. C. 88	02, 1 (h. 711	; 71 I	. J. C	h. 472 ;	86	
L. T. 194; 50 W. R. 388; 18	T. L.	R. 387	•••	•••	•••	•••	59 125
Partridge v. Navlor, Cro. Eliz. 480)		•••	•••	•••	•••	293
Pascoe v. Pascoe, 3 Bing. N. C. 88 Paterson, Ex parte, 11 Ch. D. 908	8	•••			•••	250,	415
Talemon. La varie. II Ch. D. 803	: % IL	ı. I. Z4	U : ZI	YY . IL.	940	•••	456
Patman v. Harland, 17 Ch. D. 35 29 W. R. 707		L. J.	CH. 04	2; 1 4		20 ; 114.	440
			•••	•••	•••	•••	
Paton v. Carter, C. & E. 183 Patten v. Patten, Alcock & Napier Patten v. Reid, 6 L. T. 281	, 493	•••		•••	•••	•••	60
Patten v. Keid, 6 L. T. 281	. 41 73	7 TR 89	25	 	•••	•••	454 109
Patten v. Reid, 6 L. T. 281 Pattle v. Anstruther, 69 L. T. 175 Pattle v. Hornibrook, '97, 1 Ch.	25; 66	L. J.	Ch. 14	4:75	L. T. 4	75:	
45 W. R. 123 Paul, Re, 24 Q. B. D. 247; 59 L.		•••		•••	103,	111,	183
Paul, Re, 24 Q. B. D. 247; 59 L	J. Q. B	. 30;6	11 L. T	. 835	•••	•••	54 6
Paul v. Meek, 2 Y. & J. 116 Paul v. Nurse, 8 B. & C. 486	•••	•••	•••	•••	•••		
						,	

Double Door OD & C 507							PAGE
Paull v. Best, 3 B. & S. 537 Paull v. Simpson, 9 Q. B. 365; 15	TT	0 B	 882 · 11	 Jue 1	9	•••	824 452:
Pawley v. London and Provincial	Bank.	'00. I	Ch. 58	69 L.	J. Ch.		104
81 L. T. 507; 48 W. R. 107	•••	•••	•••	•••	•••	•••	61
Pawley v. London and Provincial 81 L. T. 507; 48 W. R. 107 Paxton v. Newton, 2 Sm. & Giff. 9 Payne v. Burridge, 12 M. & W. 72 Payne v. Haine, 16 M. & W. 541; Payne v. Rogers, 2 H. Bl. 349 Peacock v. Penson, 11 Beav. 355 Peacock v. Purvis, 2 Br. & B. 362 Peake's Settled Estates, Rs., '93, 3 281; 42 W. R. 125	137	•••	•••	•••	•••	•	119
Payne v. Burridge, 12 M. & W. 72	7			•••	•••	•••	391
Payme v. Haine, 16 M. & W. 541;	16 L.	J. Ex.	130	•••	•••	•••	338. 335
Peacock v. Penson 11 Reav 355	•••	•••	•••	•••	•••	•••	119
Peacock v. Purvis. 2 Br. & B. 362		•••	•••	•••	•••		262
Peake's Settled Estates, Rs, '93, 8	Ch. 43	80;63	L. J. C	h. 109	69 L.	T.	
281; 42 W. R. 125 Peakin v. Peakin, '95, 2 Ir. R. 359	•••	•••	•••	•••	•••	•••	50
Peakin v. Peakin, '95, 2 Ir. R. 359	9					•••	571
Pearce v. Bastable's Trustee in B Ch. 446; 84 L. T. 525; 8 Ma Pearce v. Cheslyn, 4 A. & E. 225 Pearce v. Gardner, '97, 1 Q. B. 68 Pearce v. Morrice, 3 B. & Ad. 396 Pearce v. Watts, 20 Eq. 492; 44 1 Pearse v. Rolton 2 F. & F. 133	ankruj	etcy, 'U	1, 2 Ci	n. 122 ;	70 L.	J.	AKR
Page a Charley 4 A & F 995	ms. 20	1	•••	•••	•••	80	456 128
Pearce v. Gardner. '97. 1 O. B. 68	8	•••	•••	•••	•••		107
Pearce v. Morrice, 3 B. & Ad. 396	•••	•••	•••	•••	•••	•••	181
Pearce v. Watts, 20 Eq. 492; 44	L. J. C	h. 492	; 23 W	. R. 77	1	•••	142
· • • • • • • • • • • • • • • • • • • •	•••	•••	•••	•••	•••	•••	478
Pearson v. Commissioners of Inla	and R	evenue,	, L. R.	. 3 Ex	. 242;	37	
L. J. Ex. 171; 18 L. T. 570	- 07 -		T 17 ·	15. 17	 T 70 (177
l'earson v. Glazebrook, L. R. 3 E. Pearson and l'Anson, Re, '99, 2 G T. L. R. 452; 81 L. T.	C. Z/;	8/ L	J.EX	(D) 12	D. 1. 2	20U 1 K	577
T. I. R 459 81 I. T	980 ·	48 W	R.	154 : (33 J.	P.	
677	200,	40 11			71.	542.	544
677 Pearson r. Spencer, 1 B. & S. 571	: 3 B	. & S.	761 : 8	L. T.	166;	11	
W. R. 4/1	•••	•••	•••	•••	• • •		139
Pease v. Chaytor, 1 B. & S. 658;	3 <i>Ib</i> . 6	20;32	L. J. M	I. C. 12	1;9J	ur.	
N. S. 664; 8 L. T. 613; 11 V Pease v. Coates, 2 Eq. 688; 36 L. L. T. 886; 14 W. R. 1021	W. R.	568_			•••	:::	309
Pease v. Coates, 2 Eq. 688; 36 L.	J. Ch	. 57;	12 Jur.	N. 8	684;	14	360-
Pease v. Courtney, '04, 2 Ch. 503	. 79 T	T Ch	780		941 .	90	300
T. L. R 653							41
Peck and School Board for London	n. Re.	'93. 2 ·	Ch. 81/	5: 62]	L. J. (Ch.	
598; 68 L. T. 847; 41 W. R.	888			•••	•••	•••	139
Pedley v. Dodds, 2 Eq. 819; 14 L	T. 82	23;14	W. R.	884	•••	•••	133
598; 68 L. T. 847; 41 W. R. Pedley v. Dodds, 2 Eq. 819; 14 L Peebles v. Crosthwaite, 13 T. L. R. Peed v. King, 11 T. L. R. 18 Peers v. Sneyd, 17 Beav. 157 Peirse v. Sharr, 2 Man. & Ry. 418 Pellatt v. Boosey, 31 L. J. C. P. 2 Pembroke v. Berkeley, Cro. Eliz. 3 Pembroke (Earl of) v. Warren, '96 Penfold v. Abbot. 32 L. J. O. B. 65	. 198	•••	•••	•••	•••	•••	422
Peed v. King, 11 T. L. R. 18	•••	•••	•••	•••	•••	•••	232
Peers v. Sneyd, 17 Beav. 157	•••	•••	•••	•••	•••		71
Pullatt a Rosent 21 T T C P 9	21 . 2	In N	S 110	7	986	#U,	501
Pembroke a Rerkeley Cro Eliz	01;0	JIII. IN.			200,		495
Pembroke (Earl of) v. Warren. '96	. 1 Ir.	R. 76			•••	•••	362
	7; 9 J	ur. N.	S. 517	; 7 L	Т. 38	34;	
11 W. R. 169	•••	•••	•••	•••	•••		398
Penley v. Watts, 7 M. & W. 601	•••	•••	•••	•••		•••	417
Pennant's Case, 3 Rep. 64 a	•••	T			496,	500,	501
Penniall v. Harborne, 11 Q. B.	368;	17 L.	J. Q.	15. 94	; 12 J	ur. 380,	921
159 Pennington v. Cardale, 3 H. & N. Pennington v. Crossley & Sons, Lin	ASA .	97 I. I	Fr 45	38	•••	•••	26
Pennington v. Crosslev & Sons. Liv	n. 13	T. I. I	. 513		•••	•••	248
						844.	529
Penton v. Barnett, '98, 1 Q. B. 27	6;67	L. J. Q	Q. B. 11	; 77 I	T. 64	5;	
46 W. R. 33	•••	•••	•••	•••	•••	•••	501
Penton v. Barnett, '98, 1 Q. B. 27 46 W. R. 33 Penton v. Robart, 2 Bast, 88 Perkins, Re, Poyser v. Beyfus, '98, L. T. 666; 46 W. R. 595 Perreau v. Bevan, 5 B. & C. 284				518	, 519,	526,	527
Perkins, Re, Poyser v. Beyfus, '98,	, 2 Ch	. 182 ;	67 L.	J. Ch.	454;	78	444
L. T. 666; 46 W. K. 595	•••	•••	•••	•••	•••	•••	414 91/)
Perrings Rucel 7 C & D 940	•••	•••	•••	•••	•••	•••	79
Perry v. Chotzner. 9 T L. R 488	•••	•••	•••	•••		•••	338
Perry r. Davis, 3 C. B. N. S. 769	•••	•••	•••	•••	•••	3 51,	
Perry v. Shipway, 1 Giff. 1; 28 L.	J. Ch	. 660	•••	•••		•••	91
Perreau v. Bevan, 5 B. & C. 284 Perring v. Brook, 7 C. & P. 360 Perry v. Chotzner, 9 T. L. R. 488 Perry v. Davis, 3 C. B. N. S. 769 Perry v. Shipway, 1 Giff. 1; 28 L. Peter v. Kendal, 6 B. & C. 703	•••	•••	•••	•••	•••	2,	491

Petre v. Ferrers, 61 L. J. Ch. 426; 6	5 T. T 588			PAGE 564
Petrie v. Daniel. 1 Smith. 199	1.500	··· ···		535
Petrie v. Daniel, 1 Smith, 199 Petty v. Evans, 2 Brown. & G. 40 Phelan v. Tedcastle, 15 L. R. Ir. 169 Phene v. Popplewell, 12 C. B. N. S.	•••	•••		65
Phelan v. Tedcastle, 15 L. R. Ir. 169	•••	•••		109
Phené v. Popplewell, 12 C. B. N. S.	334; 31 L.	J. C. P. :	235	487
Pheysey v. Vicary, 16 M. & W. 484 Philipps v. Rees, 24 Q. B. D. 17; 59 W. R. 53			•••	137
Philipps v. Rees, 24 Q. B. D. 17; 59	L. J. Q. B.	1;61 L	. T. 713;	38
W. R. 53 Philips v. Beer, 4 Camp. 266 Phillipps v. Smith, 14 M. & W. 589	•••	•••	•••	807
Phillips v. Beer, 4 Camp. 266	• •••	•••	••• .	229
Phillipps v. Smith, 14 M. & W. 589 Phillips v. Alderton, 24 W. R. 8 Phillips v. Berryman, 3 Dougl. 286; Phillips v. Bridge, L. R. 9 C. P. 48:	• •••	•••	•••	349
Phillips of Regression, 24 W. R. O	1 Salw N	D 879	•••	111, 112 809
Phillips v. Bridge, L. R. 9 C. P. 48;	48 T. J C	P 13 · 9	9 T. T 6	. o
22 W. R. 237 Phillips v. Doyle, 32 Sol. Journ. 11 Phillips v. Edwards, 33 Beav. 440 Phillips v. Everard, 5 Sim. 102 Phillips v. Hartley, 3 C. & P. 121 Phillips v. Henson, 3 C. P. D. 26; 4	20 23. 0. 0		<i>.</i>	173
Phillips v. Dovle, 32 Sol. Journ, 11				144
Phillips v. Edwards, 33 Beav. 440	• •••	•••	•••	111, 121
Phillips v. Everard, 5 Sim. 102	• •••		•••	124
Phillips v. Hartley, 3 C. & P. 121	•••		•••	78
Phillips r. Henson, 3 C. P. D. 26; 4	7 L. J. C. P	. 273; 3	7 L. T. 48	32 ;
26 W. R. 214 Phillips v. Jones, 9 Sim. 519 Phillips v. Low, '92, 1 Ch. 47; 61 L. Phillips v. Miller, L. R. 10 C. P. 420	• •••	•••	•••	269
Phillips v. Jones, 9 Sim. 519		·::::		205, 208
Phillips v. Low, '92, 1 Ch. 47; 61 L.	J. Ch. 44;	65 L. T.	552	139
Phillips v. Miller, L. R. 10 C. P. 420); 44 L. J.	C. P. 2	65; 32 L.	Т.
688; 23 W. R. 834	D & D 49	•••		446
Phillips v. Tearce, v D. & C. 455; 6	LIOR	 144	•••	33
638; 23 W. R. 834 Phillips v. Pearce, 5 B. & C. 433; 8 Phillips v. Shervill, 6 Q. B. 944; 14 Phillips v. Whitsed, 2 E. & E. 804;	29 L J O			0
727 : 2 L. T. 278 : 8 W. R. 494	20 22 0. %.	D. 101,		270. 297
Philpot v. Hoare, 2 Atk. 219		•••	•••	441
Philpot v. Lehain, 35 L. T. 855	• •••	•••	•••	329
Phipps v. Jackson, 56 L. J. Ch. 550	; 35 W. R.	378	•••	378
727; 2 L. T. 278; 8 W. R. 494 Philpot v. Hoare, 2 Atk. 219 Philpot v. Lehain, 35 L. T. 855 Phipps v. Jackson, 56 L. J. Ch. 550 Phipps v. Sculthorpe, 1 B. & A. 50 Pierson v. Harvey, 1 T. L. R. 430 Piggott v. Birtles, 1 M. & W. 441 Piggott v. Stratton, 1 D. F. & J. 38	•••		•••	75
Pierson v. Harvey, 1 T. L. R. 430	• •••	•••	•••	500
Piggott v. Birtles, 1 M. & W. 441			267,	287, 296
Piggott v. Stratton, 1 D. F. & J. 33	; 29 L. J.	Ch. 1;	6 Jur. N.	8.
Pigot v. Garnish, Cro. Eliz. 678, 734 Pike v. Eyre, 9 B. & C. 909 Pilkington v. Dalton, Cro. Eliz. 575 Pilkington v. Shallar, 2 Vern. 374 Pilkington v. Shallar, 2 Vern. 374 Pilling's Trusts, Re, 26 Ch. D. 432 853	• •••	•••	•••	498
Pigot a Camiel Cro Viz 679 794	• •••		•••	184
Dikan Eura Q R & C Q0Q	•••	•••	•••	411, 492
Pilkington v Dalton Cro Eliz 575	• • • •	•••	•••	221
Pilkington v. Hastings, Cro. Eliz. 81			•••	298
Pilkington v. Shallar, 2 Vern. 374			•••	430
Pilling's Trusts, Re, 26 Ch. D. 432	; 58 L. J.	Ch. 105	2; 32 W.	R.
853	• •••		•••	62
Pilling v. Armitage, 12 Ves. 78		•••	•••	49, 111
Pilling's Trusts, Re, 26 Ch. D. 432 853 Pilling v. Armitage, 12 Ves. 78 Pilton, Ex parte, 1 B. & A. 369 Pincomb v. Thomas, Cro. Jac. 524 Pincomb v. Judson, 6 Bing. 206 Pinhorn v. Souster, 8 Ex. 763; 22 L. Pistor v. Cater, 9 M. & W. 315; 12 Pitcher v. Tovey, 4 Mod. 71; 1 Salk. Pitman v. Woodbury, 3 Ex. 4 Pitt v. Shew, 4 B. & A. 206 Pitt v. Smith, 3 Camp. 33 Pitt v. Smowden, 3 Atk. 750 Place v. Fagg, 4 M. & Ry. 277 Plant v. Bourne, '97, 2 Ch. 281; 66	• •••	•••	•••	581
Pincomb v. Thomas, Cro. Jac. 524	• •••	•••	•••	143
Pinero v. Judson, 6 Bing. 206	T 12 000	•••		80, 98
Pinton a Cuton O. M. & W. 215 : 10	J. EX. 200		04,	420, 404
Ditcher of Toyer 4 Med 71 . 1 Selle	L. 9. EX. 12 91	<i>y</i>	917	440 454
Pitman n Woodhury 3 Er. 4	. 01			184
Pitt v. Shew. 4 B. & A. 206		•••	• •••	257, 305
Pitt v. Smith. 3 Camp. 33	• •••		•••	74
Pitt r. Snowden, 3 Atk. 750	• •••		•••	253
Place v. Fugg, 4 M. & Ry. 277			•••	517
	L. J. Ch. 64	13; 76 L	. T. 820;	
W R 59				109
Plant v. James, 5 B. & Ad. 791; 4 A	. & E. 749		•••	187
Plant v. James, 5 B. & Ad. 791; 4 A Platt v. Sleap, Cro. Jac. 275 Pleasant v. Benson, 14 East, 234	• •••	•••	•••	484
Pleasant v. Benson, 14 East, 234 Plimmer v. Mayor, &c., of Wellington		D C 1	NK , K1 T	476, 492
475 O App Con 400	п. во т. ј.	r. c. 1	UU, UI LA	110
475; 9 App. Cas. 699 Pluck v. Digges, 5 Bligh N. S. 31	• •••	•••	•••	415
TING N. TARROS S DIRECTA ' 2. 91	• •••	•••	•••	219

							P	AGE
Plumer v. Brisco, 11 Q. B. 4	8; 17	L. J	Q. B. :	158	•••	•••	• • •	311
Plummer, Ex parte, 1 Atk. 1 Plummer v. Johnson, 18 T. 1 Pochin v. Smith, 52 J. P. 4 Pocock v. Eustace, 2 Camp. Pocock v. Gilham, C. & E. 10	08	. •••	•••	•••	•••	•••	• • •	323
Plummer v. Johnson, 18 T. 1	L. R.	316	•••	•••	•••	•••		338
Pochin v. Smith, 52 J. P. 4	•••	•••	•••	•••	•••	•••	406,	408
Pocock v. Eustace, 2 Camp. 1	181.	•••	•••	•••	•••	•••	•••	280
Pocock v. Gilham, C. & E. 10)4	•••	•••	•••	•••	•••	•••	351
Pocock v. Gilham, C. & E. 10 Polden v. Bastard, 7 B. & S.	180;	L. R.	1 Q. :	B. 156	; 85 I	J. Q	B.	
92; 13 L. T. 441; 14 W Pollen v. Brewer, 7 C. B. N.	7. R.	198			••••	•••	137.	139
Pollen v. Brewer, 7 C. B. N.	S. 37	1; 6.	Jur. N.	. 8. 509		92	2, 463,	570
Pollitt v. Forrest, 11 Q.	B. 94	9: 16	L. J	. Q. 1	3. 424	: 11	Jur.	
Pollict v. Forest, 11 Q. 1 1032 Pollock v. Booth, Ir. R. 9 Eq Pollock v. Stacy, 9 Q. B. 103 Pomery v. Partington, 3 T. F Pomford v. Ricroft, 1 Wms. S Ponsford v. Abbott, C. & E. Ponsford v. Walton, L. R. 3 Ponsonby v. Adams, 2 Bro. I Pontifex v. Foord, 12 Q. B. J. 32 W. R. 316				•	•••	•••	227.	248
Pollock v. Booth, Ir. R. 9 Eq.	. 229		•••	•••			,	99
Pollock v. Stacy, 9 O. B. 102	18 : 1	в I. J	. Ö. B.	132 :	11 Jur.	267		415
Pomery v Partington S.T. F	865		. 40. 2.	,			51	52
Pomfret a Ricroft 1 Wms S	lennd	657 (ed 18'	711	•••	•••	•	225
Poneford a Abbett C & E	995		cu. 10	• • ,	•••	•••	•••	92
Poneford e Walton I. P. 9	C D	167	•••	•••	•••	•••	•••	100
Donasahwa Adama 9 Rus I	O. 1.	491	•••	•••	•••	•••	•••	907
Dontifor a Found 10 A D I	1. 0.	3 . EO	T "T (\ D 9	21 . 40	т т	000.	441
rontilex v. roord, 12 Q. D. J	D. 15	2; 00	ш. э. ч	у. D. 3	21; 48	ъ. т.	ove;	417
T 1 0 40 1M	T	105						000
Pool v. Crawcour & Co., 1 T.	L. K.	100	37 10		+ ''; <i>,</i>			286
32 W. R. 316 Pool v. Crawcour & Co., 1 T. Poole and Carke's Contract,	Ke, ')4, W.	N. 13	3; 73	L. J. (in. 612	; ; 91	
L. T. 275	•••	•••	•••	•••	•••	•••	•••	442
Poole's, Case, 1 Salk. 368	· <u>··</u>			•••	•••	518	5, 526,	527
Poole's Settlement, Re, 50 L.	T. 58	35; 32	w. R	. 956	•••	•••	•••	46
Poole v. Bentley, 12 East, 16	18	•••	•••	•••	•••	•••	•••	80
Poole v. Longueville, 2 Saun	d. 290), n. (7)	•••	•••	•••	•••	264
Poole v. Warren, 8 A. & E. 5	582;	3 Jur.	23	•••	•••	•••	•••	566
Poole, Mayor of, v. Whitt, 1!	5 M. &	k W. 5	571; 10	6 L. J.	Ex. 22	29	69,	238
Pooley Hall Colliery Co., Re,	18 V	V. R. 2	201	•••	•••	•••	•••	36
Pope v. Biggs, 9 B. & C. 245		•••	•••	•••	•••	(38, 77,	225
Poole and Clarke's Contract, L. T. 275 Poole's Case, 1 Salk. 368 Poole's Settlement, Re, 50 L. Poole v. Bentley, 12 East, 16 Poole v. Warren, 8 A. & E. 5 Poole, Mayor of, v. Whitt, 14 Pooley Hall Colliery Co., Re, Pope v. Biggs, 9 B. & C. 245 Pordage v. Cole, 1 Wms. Sau Porry v. Allen, Cro. Eliz. 17 Porter v. Drew, 5 C. P. D. 14	ınd. 3	19 b;	548 (e	d. 1871		•••	•••	159
Porty v. Allen, Cro. Eliz. 173	3		`	•••	´	•••	•••	489
Porter v. Drew, 5 C. P. D. 14	13;4	9 L. J	. C. P.	482;	42 L.	T. 151	; 28	
W. R. 672 Porter v. Shephard, 6 T. R. 6 Porter v. Swetnam, Styles, 4 Portman v. Home Hospital A Portman v. Mill, 3 Jur. 356 Portmore v. Goring, 4 Bing. Portuguese Mines. Lim., Re.	•••		•••		•••		417,	520
Porter v. Shephard, 6 T. R.	665		•••	•••			′	159
Porter v. Swetnam, Styles, 4	06	•••				•••		151
Portman v. Home Hospital A	ssocia	tion. 2	27 Ch. 1	D. 81. r	. : 50	L. T.59	9. n.	358
Portman v. Mill. 3 Jur. 356				, -	,		•••	135
Portmore v. Goring. 4 Bing.	152					•••		187
Portuguese Mines, Lim., Re, Postman v. Harrell, 6 C. & F Potter, Re, 18 Eq. 381; 48 I	45 C	h. D. 1	6 . 83	T. T.	428 · 8	9 W. 1	R 25	22
Postman n Harrell & C. & F	225		.,	2. 1.	, 0		974	815
Potter Re 18 Wa 281 · 48 I		RL 19	a · · ×	T. T.	 118 · 9	9 W R	788	958
Potter v. Bradley, 10 T. I. F Potter v. Duffield, 18 Eq. 4; Potter v. Peters, 64 L. J. Ch. Potts v. Smith, 6 Eq. 311; 3	2. U. 1	DA. 10	<i>a</i> , <i>b</i> 0	1. 1. (, , ,	2 11 . Ц		215
Potter of Duffield 18 Fo 4.	49 T.	T Ch	479 .	99 W	D KR	κ	•••	100
Potter m Peters 84 I. I Ch	957	. 79 T	T 80	, 22 TV .	16. 00	<i></i>	107	110
Dotte a Smith & Wa 911.9	Q T	, 12 H	. 1. U2	T T 4	200 . 14	. 337 D	201	401
Doubtness a Holman 1 Stu 4	UK 111. 9	. On. t	, 10	ш. т. о	28 ; 10	J W. IL	. 091	415
Poultney v. Holmes, 1 Str. 4 Powell, Re, W. N. (1884) 67 Powell v. Chester, 52 L. T. 7 Powell v. Lovegrove, 8 D. M.	UJ	•••	•••	•••		•••	220,	410
Powell, Re, W. N. (1884) 67	•••	•••	•••	•••	•••			4
rowen v. Chester, 52 L. 1. /	22	0.57	•••	•••	•••		355,	
Powell 7. Lovegrove, 8 D. M.	. & G	30/			m ···	00.3	7 D	116
Powell v. Smith, 14 Eq. 85;	41 L	. J. Cn	1. 734;	26 L.	T. 754	; 20 V	v. K.	
602	•••		•••	•••	•••	71	l, 120,	482
Powers, Rc, 63 L. T. 626; 39	₩.	R. 185	·	•••	•••	•••	253,	535
Powis v. Lord Dynevor, 35 L	. T. 9	40	•••	•••	•••	•••	•••	117
Powis v. Smith, 5 B. & A. 85	0	•••	•••	•••	•••	•••	•••	226
Powley v. Walker, 5 T. R. 87	73	•••	•••	•••	•••	•••	•••	36 8
Pownall v. Moores, 5 B. & A.	416	•••	•••	•••	•••	•••	•••	373
Powys v. Blagrave, 4 D. M. &	k G. 4	148; 2	4 L. J.	. Ch. 1	42	•••	•••	352
Poynter v. Buckley, 5 C. & P	. 512	•••	•••	•••	•••	•••	•••	302
Powell v. Smith, 14 Eq. 85; 602 Powers, Re, 63 L. T. 626; 38 Powis v. Lord Dynevor, 35 L Powis v. Smith, 5 B. & A. 85 Powley v. Walker, 5 T. R. 37 Pownall v. Moores, 5 B. & A. Powys v. Blagrave, 4 D. M. & Poynter v. Buckley, 5 C. & P Pratt v. Brett, 2 Madd. 62 Pratt v. Keith, 33 L. J. Ch. 8	•••	•••	•••	•••	•••	•••	•••	353
Pratt v. Brett, 2 Madd. 62 Pratt v. Keith, 33 L. J. Ch. !	528:	10 Ju	r. N. S	3. 305 :	10 L.	T. 15	; 12	_
W. R. 394			•••	•••	•••	•••	••••	228
Predyman v. Wodry, Cro. Ja	c. 109			•••	•••	•••	•••	22

						P	AGE
Preece v. Corrie, 5 Bing. 24	•••	•••	•••	•••	•••	220,	
Prentice v. Elliott, 5 M. & W. 606	•••	•••	•••	•••	•••	•••	236
Prescott v. Boucher, 3 B. & Ad. 84 Preston v. Merceau, 2 W. Bl. 1249	9	•••	•••	•••	•••	•••	254
Preston v. Merceau, 2 W. Bl. 1249	•••	··· _	:: .	•••	<u></u>	•••	127
Pretty v. Bickmore, L. R. 8 C. P. 4	01; 2	8 L. T.	704;	21 W.	K. 733		335
Price, Re, 13 Q. B. D. 466; 33 W.	R. 139	• • • •	•••	•••	•••	•••	455
Price v. Assheton, 1 Y. & C. Ex. 82 Price v. Dyer, 17 Ves. 356	2	•••	•••	•••	•••	•••	168
l'rice v. Dyer, 17 Ves. 356	··· -		•••	•	•••	•••	482
Price v. Griffith, 1 D. M. & G. 80;	21 L.	J. Ch.	78; 15	Jur.	093	116,	
Price v. Salusbury, 32 Beav. 446;	82 L.	J. Ch. 4	141; 1	4 L. T.	. 110		
Price v. Thomas, 2 B. & Ad. 218 Price v. Varney, 3 B. & C. 738 Price v. Williams, 1 M. & W. 6; 5	•••	•••	•••	•••	•••	•••	179
Price v. Varney, 3 B. & C. 733	··· -		•••	•••	•••	•••	70
Price v. Williams, I M. & W. 6; 5	. ل. بل	Ex. 128)			23,	188
Price v. Worwood, 4 H. & N. 512	; 28	L. J. 1	Sx. 321);	ur. N.	8.	
472			··· m	•••	380,	500,	201
Pride v. Bubb, 7 Ch. 64; 41 L. J.						ĸ.	
		•••		•••		•••	15
Prince v. Evans, 29 L. T. 835 Proctor, Re, 8 Morr. 251 Proctor v. Bayley, 42 Ch. D. 890	•••	•••	•••	•••	•••	•••	478
Proctor, Re, 8 Morr. 251	•••	•••	•••	•••	•••	•••	458
Proctor v. Bayley, 42 Ch. D. 390		.:: -	::			•••	121
Progress Assurance Co., Re, 9 Eq. 3	370; 8	9 L. J.	Ch. 50)4;22	L. T.	707	327
Parker, 3 My. & K. 280	···	•••	•••	•••	•••	114,	156
Propert v. Parker, 3 My. & K. 280 Propert v. Parker, 1 Russ. & M. 62 Prosser v. Phillips, Bull. N. P. 269	5	•••	•••	•••	•••	•••	110
Prosser v. Phillips, Bull. N. P. 269)		::-		•••		175
Proud v. Bates, 34 L. J. Ch. 406; L. T. 61	ll Jur	. N. S.	441;]	2 L. 7	r. 565;	18	
L. T. 61	•••		•••	•••	144,	145,	203
Proudfoot v. Hart, 25 Q. B. D. 42	; 59 L	. J. Q.	B. 389	; 68 L	. T. 1	71;	
38 W. R. 730	•••	•••	•••	•••	•••	•••	340
Proudlove v. Twemlow, 1 Cr. R. &	M. 32	6	•••	•••	•••	287,	306
Pryce v. Davies, 35 J. P. 874	•••	•••	•••	•••	•••	•••	408
Pryse, In the goods of, '04, P. 301;	; 73 L.	. J. P. i	84	•••	Adde	nda,	cxii.
Proudlove v. Twemlow, 1 Cr. R. & Pryce v. Davies, 35 J. P. 374 Pryse, In the goods of, '04, P. 301; Pugh v. Arton, 8 Eq. 626; 38 L. J	. Ch. 6	319;20) L. T.	865;	17 W.	R.	
984	•••	•••		•••	525,	527,	528
Pugh v. Griffith, 7 A. & E. 827	•••	•••	•••	•••	•••		285
Pugh v. Leeds, Duke of, 2 Cowp. 7	14			•••	•••	•••	146
Pugh v. Leeds, Duke of, 2 Cowp. 7 Pugh v. Stringfield, 3 C. B. N. S. 2 Pulbrook v. Ashby, 56 L. J. Q. B. Pulbrook r. Lawes, 1 Q. B. D. 284	2	•••	•••	•••	•••	•••	160
Pulbrook v. Ashby, 56 L. J. Q. B.	376 ; 3	35 W. 1	2. 779	•••	•••	•••	249
Pulbrook r. Lawes, 1 Q. B. D. 284	; 45 L	. J. Q.	B. 178	; 34 I	L T. 9	5	116
Pullen v. Palmer, 3 Salk. 207	•••		•••	•••	•••	255,	256
Pulteney v. Shelton, 5 Ves. 147	•••	•••		•••	•••	•••	477
Punnett, Ex parte, 16 Ch. D. 226;	50 L	. J. Ch.	212:	44 L.	Γ. 226 :	29	
W. R. 129		•••	- ,		•••	•••	251
Pursell and Deakin's Contract, Re,	W. N.	(1893)	p. 152		•••	•••	114
Purssell, Ex parte, 34 Ch. D. 646;	56 L	J. Ch.	332:	56 L. 7	792 :	85	
W. R. 421					•••		328
W. R. 421 Purvis v. Rayer, 9 Price, 488	•••		•••	••		113.	426
Pyle, Re, '95, 1 Ch. 724; 64 L. J.	Ch. 47	7:72 1	T. 39	27:43	W. R.	420	165
Pyle v. Partridge, 15 M. & W. 20		. ,			•••		281
Pym v. Blackburn, 3 Ves. 34	•••	•••		•••			337
Pym v. Campbell, 6 E. & B. 370;				•••			183
Pyott v. St. John, Cro. Jac. 329	20 23.			•••	•••	•••	340
1 your v. St. vonn, Oro. vac. vzv	•••	•••	•••	•••	•••	•••	010
Quarrington v. Arthur, 10 M. & W	335			•••	•••		209
Quartermaine v. Selby, 5 T. L. R.	993			•••	•••		477
Oneen's College a Hellett 14 Keet	459						350
Onicka a Chanman '03 1 Ch 850	79	r i c	h. 379	. 88 T	. Т. а	10 -	000
Quicke v. Chapman, '03, 1 Ch. 659 51 W. R. 452; 18 T. L. R. 8	17 . 10	Tird	284	,		130	141
Quilter v. Mapleson, 9 Q. B. D. 67	9 . 59	T. J.	 	4 . 47	 ፒ. ፕ ፋ	R1 ·	
							508
31 W. R. 75 Quincy, Ex parte, 1 Atk. 477	•••		•••		•••	•••	525
Oning a Shields In D 11 C T C	554		•••	•••			142
Quinn v. Shields, Ir. R. 11 C. L. 2	UT	•••	•••	•••	•••	•••	176
D a Aulosburg O O R 981							387
R. v. Aylesbury, 9 Q. B. 261 R. v. Banbury, 1 A. & E. 136	•••	•••	•••	•••	•••	•••	490
II. V. IMIUUUIY. L AL GL D. 100		•••					

R. r. Barclay, 8 Q. B. D. 486; 5	1 T.	J. M.	C. 47	46 T.	Т. 335		PAGE
W. R. 472							385
R. v. Bedworth, 8 East, 387	•••	•••	•••	•••	•••	•••	205
R. v. Bissex, Sayer, 304 R. v. Bolton, 1 Q. B. 66; 10 L.	гж	C 49	•••	•••	•••	•••	273 579
R. v. Brettel, 3 B. & Ad. 424		. 0. 48	· •••	•••	•••	•••	199
R. v. Castle Morton, 3 B. & A. 58	38	•••		•••	•••	•••	123
R. v. Chawton, 1 Q. B. 247; 10	L. J.	м. с.	55;5	Jur. 244			465
R. v. Cheshire, JJ. of, 5 B. & Ad.			J. M.		•••	88	273 466
R. v. Chieshunt, Inhabs. of, 1 B. & R. v. Chipping Norton, 5 East, 2	39	¥10	•••	•••	•••		22
R. v. Clark, 2 Cowp. 610	•••	•••	• •••	•••	•••	•••	293
R. v. Collett, R. & R. C. C. 498	•••	•••	•••	•••	•••		91
R. v. Cotton, Parker, 112 R. v. Davis, 5 B. & Ad. 551	•••	•••	•••	•••	•••		304 278
R. v. Dunsford, 2 A. & E. 568	•••	•••	•••	•••	•••	•••	199
R. r. Dunstan, 4 B. & C. 686		•••	•••		•••	525,	526
R. v. Everist, 10 Q. B. 178; 16 L	. J.	M. C.	87; 11			•••	218
R. v. Great Glenn, Inhabs. of, 5 I R. v. Hale, 9 A. & E. 339			8	•••	•••	•••	450 65
R. v. Haughley, 4 B. & Ad. 650		•••	•••	•••	•••	•••	28
n. v. merstmonceaux, / B. & C. o	DΙ	•••	•••	•••	•••	•••	96
E. r. Hockworthy, 7 A. & E. 492	•••	•••	•••	•••	•••		, 179
R. v. Hopkins, 64 J. P. 454 R. v. Horndon-on-the-Hill, 4 M.	P Q	589	•••	•••	•••	•••	581 87
R. v. Horsley, Inhabs. of, 8 East,	405		•••			•••	60
R. v. Hull Dock Co., 8 B. & C. 51		•••	•••		•••	•••	387
R. v. Jobling, R. & R. C. C. 525			•••		•••	•••	91
R. v. Kelstern, Inhabs. of, 5 M. & R. v. Lee, L. R. 1 Q. B. 241; 3	K T	136	C 105	. 18 T	T 704 .	14	88
W. R. 311			0. 100	, 10 11.			525
R. v. Londonthorpe, 6 T. R. 377	•••	•••	•••	•••	•••		513
R. v. Middlehurst, 1 Burr. 399 R. v. Middlesex, JJ. of, 7 Dowl.		•••	•••	•••	•••	•••	278
R. v. Middlesex, JJ. of, 7 Dowl. 7 R. v. Middlesex, Registrar of, 15	767	D 074		τ	D 597.	14	579
Jur. 1001	٧.	D. 810		. J. Q.			429
R. r. Mitcham, 1 Dowl. 226, n.		•••	•••	•••	•••		229
R. v. Morgan, Cald. 156	•••	•••	•••	•••	•••	•••	273
R. v. Morrish, 32 L. J. M. C. 245 R. v. Nicholson, 12 East, 330		•••	•••		•••	•••	86 2
R. v. North Duffield, 3 M. & S. 2	47	•••	•••		•••	•••	22
R. v. Norwich Incorporation, 30 1	, Т.	704	•••	•••	•••		220
	•••	•••	•••	•••	•••	•••	8
R. v. Old Alresford, 1 T. R. 358	•••	•••	•••		•••	•••	135
R. v. Osbourne, 6 Price, 94 R. v. Otley, 1 B. & Ad. 161	•••	•••	•••	•••	•••	•••	373 513
R. v. Paterson, '95, 1 Q. B. 31;	84 L						
W. R. 127	•••	•••	•••	•••	•••	•••	282
R. v. Pedley, 1 A. & E. 822	•••	•••	•••	•••	•••	•••	335 96
R. v. Prideaux, 10 East, 158 R. v. Rabbitts, 6 D. & Ry. 341	•••		•••	•••	•••	•••	273
R. v. Radnorshire, JJ. of. 9 Dowl.	90		•••	•••	•••	•••	273
R. v. Raines, 1 E. &. B. 855; 22 R. v. Richmond, Recorder of, E. 1	L. J	. Q. B.	223	•••	•••	•••	310
R. v. Kichmond, Recorder of, E. l	5. & 477	E. 258	•••	•••	•••	•••	478 384
R. v. St. Mary, Durham, 4 T. R. R. v. Sewell, 8 Q. B. 161; 15 L.	ī. 0.	B. 49	: 10 Ju	r. 48	•••	•••	582
R. v. Sherrington, 3 B. & Ad. 714						•••	8
R. v. Shropshire, JJ. of, 6 Q. I	3. D	. 669 ;	50 L	. J. M.	C. 72;	29	
W. R. 567	•••	•••	•••	•••	•••	•••	278
R. v. Sidgley, 2 B. & Ad. 65 R. v. Shawstone, 18 O. B. 388	•••	•••	•••	•••	•••	•••	199 478
R. v. Shawstone, 18 Q. B. 388 R. v. Southerby, Bunbury, 5	•••						264
R. v. Spurrell, L. R. 1 Q. B. 72	•••	•••	•••	•••	•••	•••	88
R. v. Sutton, 3 A. & E. 597	•••	•••	•••	•••	•••	•••	8, 9

P v Thomaton (Inhabitants of)	0 TP 6	10 70	0 - 00		F 0 1	PAG
R. v. Thornton (Inhabitants of), R. v. Tolpuddle, 4 T. R. 671 R. v. Topping, M'Clel. & Y. 544 R. v. Traill, 12 A. & E. 761 R. v. Westbrook, 10 Q. B. 178; 1 Raffety v. Schofield, '97, 1 Ch. 93	Z L. &	E. /8	b ; 29	L. J. M	1. C. I	0Z · 8
D Toppudde, 4 1. R. 0/1	•••	•••	•••	•••	•••	170 50
D T. 11 10 A & F 701	•••	•••	•••	•••	•••	1/2,00
D Washmal 10 O D 170. 1	, T	N. 0	07. 1	 . T		002 01
R. v. Westorook, IV Q. D. 1/8; I	о д. ј.	M. C.	87; 1	Jur. a)15 m	203, 21
Ranety v. Schoneld, 97, 1 Ch. 98	87; 00	L. J.	Cn. 44	8; /0	L. T.	048;
45 W. R. 460		, , ,				16
Railton v. Wood, 15 App. Cas. 36 Ramage v. Womack, '00, 1 Q. B. 16 T. L. R. 63	13, 59	L. J. t	'. U. 84	1; 63 I	. I. I	5 · 32
Kaniage v. Womack, '00, 1 Q. B.	116; 6	9 L. J.	Q. B.	10;81	L. T. 8	526;
Rames v. Machin, Noy, 130 Rames v. Machin, Noy, 130 Ramsay v. Blair, 1 App. Cas. 701 Ramsbottom v. Mortley, 2 M. & S Rausbottom v. Tunbridge, 2 M. & Ramsden v. Dyson, L. R. 1 H. I	•••	•••	•••	•••	•••	59, 48
Rames v. Machin, Noy, 130	•••	•••	•••	•••	•••	•••
Ramsay v. Blair, 1 App. Cas. 701	•••	•••	•••	•••	145	, 199, 20
Ramsbottom v. Mortley, 2 M. & S	3. 445	•••	• • •	•••	•••	12
Ramsbottom v. Tunbridge, 2 M. &	k S. 43	4	•••	•••	•••	12
Ramsden v. Dyson, L. R. 1 H. I	L. 129;	12 Jr	ır.N.	3. 506 ;	14 W	'. R.
926	•••	•••	•••	•••	•••	11
Rand v. Vaughan, 1 Bing. N. C.	767	•••	•••	•••	•••	27
Randall v. Lynch, 12 East, 179		•••	•••	•••	•••	15
Randell v. Stevens, 2 E. & B. 641	l; 23 I	. J. Q	. B. 68	; 18 Ju	ır. 128	57
Randle v. Lory, 6 A. & E. 218	•••	•••	•••	• •••	•••	148, 17
Rands v. Clark, 19 W. R. 48	•••	•••	•••			56
Rauelagh v. Melton, 2 Dr. & Sm.	278 : 3	84 L. J	. Ch. 2	27:10	Jur. 1	V. S.
1141 : 11 L. T. 409 : 13 W. I	R. 150	•••		•••	•••	16
Ranken v. Hunt. 10 R. 249						36
Rankin v. Lav 2 D F & J 65	20 T.	I Ch	794			37
Ranley e Taylor C & R 150	20 23. (. О	,01	•••	•••	. 98
Rethbone Re KRI I O R 504	. 67 T	T 49	ω eκ	w p	795	45
Pawlings a Moren 19 C P N	2 77	. 1. 44 2. 94	70 , 00 T T C	W. II.	700 K • 11	T
M C KAA. 10 T TO 940. 10	10. //	740	L. J. C	. r. 10	ð, II	our.
Demline Frank D. 1 Fr. 000	W. I.	740	•••	•••	•••	40 5
Damling a Driver 9 C 1 D 969			D 40	7 . 07 1	17 D	10, U
Dawlins v. Driggs, 5 C. P. D. 500); 4/ J	J. J. C.	F. 40	1; Z1	w. L.	190 98
Towning v. Iuinoi, I Lu. Hayin.	/ 30	•••	•••	•••	•••	12
Rawlinson v. Marriott, 16 L. T. 2	207	•••	•••	•••		12 566, 56
Rawlinson v. Marriott, 16 L. T. 2 Rawson v. Eicke, 7 A. & E. 451	207	•••	•••	•••	•••	12 566, 56 7
Rawlinson v. Marriott, 16 L. T. 2 Rawson v. Eicke, 7 A. & E. 451 Rawstorne v. Bentley, 4 Bro. C. (207 C. 415				 	12 566, 56 7
Rawlinson v. Marriott, 16 L. T. 2 Rawson v. Eicke, 7 A. & E. 451 Rawstorne v. Bentley, 4 Bro. C. (Ray's Settled Estate, Re, 25 Ch. I	736 207 C. 415 C. 464 ;	 53 L.	 J. Ch.	 205 ; 5	 o L. T.	12 566, 56 7 6
Rawlinson v. Marriott, 16 L. T. 2 Rawson v. Eicke, 7 A. & E. 451 Rawstorne v. Bentley, 4 Bro. C. (Ray's Settled Estate, Re, 25 Ch. I 32 W. R. 458	207 C. 415 D. 464 ;	 53 L.	J. Ch.	 205 ; 5	 0 L. T.	12 566, 56 7 6
Rawlinson v. Marriott, 16 L. T. 2 Rawson v. Eicke, 7 A. & E. 451 Rawstorne v. Bentley, 4 Bro. C. C Ray's Settled Estate, Re, 25 Ch. I 32 W. R. 458	207 C. 415 C. 464 ;	 53 L. 	J. Ch.	205 ; 5	 0 L. T.	12 566, 56 7 6 .80; 1 380, 45
Rawlinson v. Marriott, 16 L. T. 2 Rawson v. Eicke, 7 A. & E. 451 Rawstorne v. Bentley, 4 Bro. C. (Ray's Settled Estate, Re, 25 Ch. I 32 W. R. 458 Raymond v. Fitch, 2 Cr. M. & R. Rayner v. Stone, 2 Eden, 128	207 C. 415 D. 464;	53 L.	J. Ch.	205; 5	0 L. T.	12 566, 56 7 6 .80; 1 380, 45
Rawlinson v. Marriott, 16 L. T. 2 Rawson v. Eicke, 7 A. & E. 451 Rawstorne v. Bentley, 4 Bro. C. (Ray's Settled Estate, Re, 25 Ch. I 32 W. R. 458 Raymond v. Fitch, 2 Cr. M. & R. Rayner v. Stone, 2 Eden, 128 Read v. Burley, Cro. Eliz. 549, 58	730 207 2. 415 2. 464 ; 588	53 L. 	J. Ch.	205; 5	0 L. T.	12 566, 56 7 6 .80; 1 380, 45 37 258, 26
Rawlinson v. Marriott, 16 L. T. 2 Rawson v. Eicke, 7 A. & E. 451 Rawstorne v. Bentley, 4 Bro. C. C Ray's Settled Estate, Re, 25 Ch. I 32 W. R. 458 Raymond v. Fitch, 2 Cr. M. & R. Rayner v. Stone, 2 Eden, 128 Read v. Burley, Cro. Eliz. 549, 56 Read v. Lawnse, Dyer, 212 b	207 C. 415 D. 464; 588	53 L. 	J. Ch.	205; 5	0 L. T.	12 566, 56 7 6 .80; 1 380, 45 37 258, 26 24
Rawlinson v. Marriott, 16 L. T. 2 Rawson v. Eicke, 7 A. & E. 451 Rawstorne v. Bentley, 4 Bro. C. C Ray's Settled Estate, Re, 25 Ch. I 32 W. R. 458 Raymond v. Fitch, 2 Cr. M. & R. Rayner v. Stone, 2 Eden, 128 Read v. Burley, Cro. Eliz. 549, 58 Read v. Lawnse, Dyer, 212 b Readshaw v. Balders, 4 Taunt. 57	207 C. 415 D. 464; 588 	53 L. 	J. Ch.	205; 5	0 L. T.	12 566, 56 7 6 .80; 1 380, 45 37 258, 26 24 38
Rawlinson v. Marriott, 16 L. T. 2 Rawson v. Eicke, 7 A. & E. 451 Rawstorne v. Bentley, 4 Bro. C. (Ray's Settled Estate, Re, 25 Ch. I 32 W. R. 458 Raymond v. Fitch, 2 Cr. M. & R. Rayner v. Stone, 2 Eden, 128 Read v. Burley, Cro. Eliz. 549, 58 Read v. Lawnse, Dyer, 212 b Readshaw v. Balders, 4 Taunt. 57 Reddell v. Stowey, 2 Moo, & R. 3	730 207 C. 415 D. 464; 588 96 7	53 L. 	J. Ch.	205; 5	0 L. T.	12 566, 56 7 6 .80; 1 380, 45 37 258, 26 24 38
Rawlinson v. Marriott, 16 L. T. 2 Rawson v. Eicke, 7 A. & E. 451 Rawstorne v. Bentley, 4 Bro. C. (Ray's Settled Estate, Re, 25 Ch. I 32 W. R. 458 Raymond v. Fitch, 2 Cr. M. & R. Rayner v. Stone, 2 Eden, 128 Read v. Burley, Cro. Eliz. 549, 58 Read v. Lawnse, Dyer, 212 b Readshaw v. Balders, 4 Taunt. 57 Reddell v. Stowey, 2 Moo. & R. 3 Reddin v. Jarman, 16 L. T. 449	588 66 57 588 66 7 58	53 L	J. Ch.	205; 5	0 L. T.	12 566, 56 7 6 .80; 1 380, 45 37 258, 26 24 38 29
Rawlinson v. Marriott, 16 L. T. 2 Rawson v. Eicke, 7 A. & E. 451 Rawstorne v. Bentley, 4 Bro. C. C Ray's Settled Estate, Re, 25 Ch. I 32 W. R. 458 Raymond v. Fitch, 2 Cr. M. & R. Rayner v. Stone, 2 Eden, 128 Read v. Burley, Cro. Eliz. 549, 58 Read v. Lawnse, Dyer, 212 b Readshaw r. Balders, 4 Taunt. 57 Reddell v. Stowey, 2 Moo. & R. 3 Reddin v. Jarman, 16 L. T. 449 Rede v. Farr. 6 M. & S. 121	730 C. 415 D. 464; 588 7 7	53 L	J. Ch.	205; 5	0 L. T.	12 566, 56 7 6 .80; 1 380, 45 37 258, 26 24 38 29 11
Rawlinson v. Marriott, 16 L. T. 2 Rawson v. Eicke, 7 A. & E. 451 Rawstorne v. Bentley, 4 Bro. C. (Ray's Settled Estate, Re, 25 Ch. I 32 W. R. 458 Raymond v. Fitch, 2 Cr. M. & R. Rayner v. Stone, 2 Eden, 128 Read v. Burley, Cro. Eliz. 549, 56 Read v. Lawnse, Dyer, 212 b Readshaw v. Balders, 4 Taunt. 57 Reddell v. Stowey, 2 Moo. & R. 3 Reddin v. Jarman, 16 L. T. 449 Rede v. Farr, 6 M. & S. 121 Rednath v. Roberts, 8 Esp. 225	588 66 7 588	53 L	J. Ch.	205; 5	0 L. T.	12 566, 56 7 6 .80; 1 380, 45 37 258, 26 24 38 29 11
Rawlinson v. Marriott, 16 L. T. 2 Rawson v. Eicke, 7 A. & E. 451 Rawstorne v. Bentley, 4 Bro. C. (Ray's Settled Estate, Re, 25 Ch. I 32 W. R. 458 Raymond v. Fitch, 2 Cr. M. & R. Raymor v. Stone, 2 Eden, 128 Read v. Burley, Cro. Eliz. 549, 56 Read v. Lawnse, Dyer, 212 b Readshaw r. Balders, 4 Taunt. 57 Reddell v. Stowey, 2 Moo. & R. 3 Reddin v. Jarman, 16 L. T. 449 Rede v. Farr, 6 M. & S. 121 Redpath v. Roberts, 3 Esp. 225 Reece v. Strousberg, 54 L. T. 133	588 7 588 588	53 L	J. Ch.	205; 5	0 L. T.	12 566, 56 7 6 80; 1 380, 45 37 258, 26 38 29 11 49 238, 48
Rawlinson v. Marriott, 16 L. T. 2 Rawson v. Eicke, 7 A. & E. 451 Rawstorne v. Bentley, 4 Bro. C. C Ray's Settled Estate, Re, 25 Ch. I 32 W. R. 458 Raymond v. Fitch, 2 Cr. M. & R. Rayner v. Stone, 2 Eden, 128 Read v. Burley, Cro. Eliz. 549, 58 Read v. Lawnse, Dyer, 212 b Readshaw v. Balders, 4 Taunt. 57 Reddell v. Stowey, 2 Moo. & R. 3 Reddin v. Jarman, 16 L. T. 449 Rede v. Farr, 6 M. & S. 121 Redpath v. Roberts, 3 Esp. 225 Reece v. Strousberg, 54 L. T. 133 Reed v. Daere, 7 R. & C. 261	588 7 588 66 7 58	53 L	J. Ch.	205; 5	0 L. T.	12 566, 56 7 6 80; 1 380, 45 25 24 28 29 11 49 238, 48 25
Rawlinson v. Marriott, 16 L. T. 2 Rawson v. Eicke, 7 A. & E. 451 Rawstorne v. Bentley, 4 Bro. C. C Ray's Settled Estate, Re, 25 Ch. I 32 W. R. 458 Raymond v. Fitch, 2 Cr. M. & R. Rayner v. Stone, 2 Eden, 128 Read v. Burley, Cro. Eliz. 549, 58 Read v. Lawnse, Dyer, 212 b Readshaw v. Balders, 4 Taunt. 57 Reddell v. Stowey, 2 Moo. & R. 3 Reddin v. Jarman, 16 L. T. 449 Rede v. Farr, 6 M. & S. 121 Redpath v. Roberts, 3 Esp. 225 Reece v. Strousberg, 54 L. T. 138 Reed v. Deere, 7 B. & C. 261	588 588 56 58	53 L	J. Ch	205; 5	O L. T.	12 566, 56 6 80; 1 380, 45 37 258, 26 24 25 29 11 49 238, 48 25 18
Rawlinson v. Marriott, 16 L. T. 2 Rawson v. Eicke, 7 A. & E. 451 Rawstorne v. Bentley, 4 Bro. C. C Ray's Settled Estate, Re, 25 Ch. I 32 W. R. 458 Raymond v. Fitch, 2 Cr. M. & R. Rayner v. Stone, 2 Eden, 128 Read v. Burley, Cro. Eliz. 549, 56 Read v. Lawnse, Dyer, 212 b Readshaw v. Balders, 4 Taunt. 57 Reddell v. Stowey, 2 Moo. & R. 3 Reddin v. Jarman, 16 L. T. 449 Rede v. Farr, 6 M. & S. 121 Redpath v. Roberts, 3 Esp. 225 Reece v. Strousberg, 54 L. T. 133 Reed v. Deere, 7 B. & C. 261 Reed v. Harvey, 5 Q. B. D. 184;	588 588 588 49 L.	53 L	J. Ch	205; 5	0 L. T.	12 566, 56 7 80; 1 880, 45 37 258, 26 24 38 29 11 49 238, 48 25 25 18
Rawlinson v. Marriott, 16 L. T. 2 Rawson v. Eicke, 7 A. & E. 451 Rawstorne v. Bentley, 4 Bro. C. C Ray's Settled Estate, Re, 25 Ch. I 32 W. R. 458 Raymond v. Fitch, 2 Cr. M. & R. Rayner v. Stone, 2 Eden, 128 Read v. Burley, Cro. Eliz. 549, 56 Read v. Lawnse, Dyer, 212 b Readshaw v. Balders, 4 Taunt. 57 Reddell v. Stowey, 2 Moo. & R. 3 Reddin v. Jarman, 16 L. T. 449 Rede v. Farr, 6 M. & S. 121 Redpath v. Roberts, 3 Esp. 225 Reece v. Strousberg, 54 L. T. 133 Reed v. Deere, 7 B. & C. 261 Reed v. Harvey, 5 Q. B. D. 184; 28 W. R. 423 Read v. Thoyte, 6 M. & W. 410	7007 C. 415 D. 464; 588 96 77 58 49 L.	53 L	J. Ch	205; 5	0 L. T.	12 566, 56 7 80; 1 380, 45 37 258, 26 24 38 29 11 49 238, 48 25 15 511; 458, 45
Rawlinson v. Marriott, 16 L. T. 2 Rawson v. Eicke, 7 A. & E. 451 Rawstorne v. Bentley, 4 Bro. C. C Ray's Settled Estate, Re, 25 Ch. I 32 W. R. 458 Raymond v. Fitch, 2 Cr. M. & R. Rayner v. Stone, 2 Eden, 128 Read v. Burley, Cro. Eliz. 549, 58 Read v. Lawnse, Dyer, 212 b Readshaw v. Balders, 4 Taunt. 57 Reddell v. Stowey, 2 Moo. & R. 3 Reddin v. Jarman, 16 L. T. 449 Rede v. Farr, 6 M. & S. 121 Redpath v. Roberts, 3 Esp. 225 Reece v. Strousberg, 54 L. T. 133 Reed v. Deere, 7 B. & C. 261 Reed v. Harvey, 5 Q. B. D. 184; 28 W. R. 423 Reed v. Thoyts, 6 M. & W. 410	730 C. 415 D. 464; 588 96 7 58 49 L.	53 L	J. Ch	205; 5	O L. T.	12 566, 56 7 6 80; 1 380, 45 35 38 25 18 511; 458, 45 32
Rawlinson v. Marriott, 16 L. T. 2 Rawson v. Eicke, 7 A. & E. 451 Rawstorne v. Bentley, 4 Bro. C. C Ray's Settled Estate, Re, 25 Ch. I 32 W. R. 458 Raymond v. Fitch, 2 Cr. M. & R. Rayner v. Stone, 2 Eden, 128 Read v. Burley, Cro. Eliz. 549, 56 Read v. Lawnse, Dyer, 212 b Readshaw v. Balders, 4 Taunt. 57 Reddell v. Stowey, 2 Moo. & R. 3 Reddin v. Jarman, 16 L. T. 449 Rede v. Farr, 6 M. & S. 121 Redpath v. Roberts, 3 Esp. 225 Recce v. Strousberg, 54 L. T. 133 Reed v. Deere, 7 B. & C. 261 Reed v. Harvey, 5 Q. B. D. 184; 28 W. R. 423 Reed v. Thoyts, 6 M. & W. 410 Rees v. Davies, 4 C. B. N. S. 56	588 588 588 56 7 58 49 L.	53 L	J. Ch	205; 5	O L. T.	12 566, 56 6 80; 1 380, 45 37 258, 26 24 38 29 11 49 238, 48 25 18 5511; 458, 45 32
Rawlinson v. Marriott, 16 L. T. 2 Rawson v. Eicke, 7 A. & E. 451 Rawstorne v. Bentley, 4 Bro. C. (Ray's Settled Estate, Re, 25 Ch. I 32 W. R. 458 Raymond v. Fitch, 2 Cr. M. & R. Rayner v. Stone, 2 Eden, 128 Read v. Burley, Cro. Eliz. 549, 56 Read v. Lawnse, Dyer, 212 b Readshaw v. Balders, 4 Taunt. 57 Reddell v. Stowey, 2 Moo. & R. 3 Reddin v. Jarman, 16 L. T. 449 Rede v. Farr, 6 M. & S. 121 Redden v. Berest, 3 Esp. 225 Rece v. Strousberg, 54 L. T. 133 Reed v. Deere, 7 B. & C. 261 Reed v. Harvey, 5 Q. B. D. 184; 28 W. R. 423 Red v. Thoyts, 6 M. & W. 410 Rees v. Davies, 4 C. B. N. S. 56 Rees v. King, Forrest, 19	7007 C. 415 D. 464; 588 96 7 58 49 L.	53 L	J. Ch	205; 5 5; 42 1	0 L. T.	12 566, 56 7 880; 1 880, 1 380, 45 37 258, 26 24 49 238, 48 25 18 511; 458, 45 58
Rawlinson v. Marriott, 16 L. T. 2 Rawson v. Eicke, 7 A. & E. 451 Rawstorne v. Bentley, 4 Bro. C. C Ray's Settled Estate, Re, 25 Ch. I 32 W. R. 458 Raymond v. Fitch, 2 Cr. M. & R. Rayner v. Stone, 2 Eden, 128 Read v. Burley, Cro. Eliz. 549, 58 Read v. Lawnse, Dyer, 212 b Readshaw v. Balders, 4 Taunt. 57 Reddell v. Stowey, 2 Moo. & R. 3 Reddin v. Jarman, 16 L. T. 449 Rede v. Farr, 6 M. & S. 121 Redpath v. Roberts, 3 Esp. 225 Reece v. Strousberg, 54 L. T. 133 Reed v. Deere, 7 B. & C. 261 Reed v. Harvey, 5 Q. B. D. 184; 28 W. R. 423 Reed v. Thoyts, 6 M. & W. 410 Rees v. Davies, 4 C. B. N. S. 56 Rees v. King, Forrest, 19 Rees v. Perrot, 4 C. & P. 230	7007 C. 415 D. 464 ; 588 96 7 49 L	53 L	J. Ch	205; 5	O L. T.	12 566, 56 7 6 80; 1 380, 45 37 258, 26 24 38 25 11 49 238, 48 25 15 511; 458, 45 32 174, 49
Rawlinson v. Marriott, 16 L. T. 2 Rawson v. Eicke, 7 A. & E. 451 Rawstorne v. Bentley, 4 Bro. C. C Ray's Settled Estate, Re, 25 Ch. I 32 W. R. 458 Raymond v. Fitch, 2 Cr. M. & R. Rayner v. Stone, 2 Eden, 128 Read v. Burley, Cro. Eliz. 549, 56 Read v. Lawnse, Dyer, 212 b Readshaw v. Balders, 4 Taunt. 57 Reddell v. Stowey, 2 Moo. & R. 3 Reddin v. Jarman, 16 L. T. 449 Rede v. Farr, 6 M. & S. 121 Redpath v. Roberts, 3 Esp. 225 Reece v. Strousberg, 54 L. T. 133 Reed v. Deere, 7 B. & C. 261 Reed v. Harvey, 5 Q. B. D. 184; 28 W. R. 423 Reed v. Thoyts, 6 M. & W. 410 Rees v. Davies, 4 C. & P. 8. S. 56 Rees v. King, Forrest, 19 Rees v. Perrot, 4 C. & P. 230 Reeve v. Berridge, 20 Q. B. D. 52	588	53 L	J. Ch	205; 5 5; 42	O L. T.	12 566, 56 6 80; 1 380, 45 37 258, 26 24 38 25 18 511; 458, 45 58 174, 49 47 836;
Rawlinson v. Marriott, 16 L. T. 2 Rawson v. Eicke, 7 A. & E. 451 Rawstorne v. Bentley, 4 Bro. C. C Ray's Settled Estate, Re, 25 Ch. I 32 W. R. 458 Raymond v. Fitch, 2 Cr. M. & R. Rayner v. Stone, 2 Eden, 128 Read v. Burley, Cro. Eliz. 549, 56 Read v. Lawnse, Dyer, 212 b Readshaw v. Balders, 4 Taunt. 57 Reddell v. Stowey, 2 Moo. & R. 3 Reddin v. Jarman, 16 L. T. 449 Rede v. Farr, 6 M. & S. 121 Redpath v. Roberts, 3 Esp. 225 Rece v. Strousberg, 54 L. T. 133 Reed v. Deere, 7 B. & C. 261 Reed v. Harvey, 5 Q. B. D. 184; 28 W. R. 423 Reded v. Thoyts, 6 M. & W. 410 Rees v. Davies, 4 C. B. N. S. 56 Rees v. King, Forrest, 19 Rees v. Perrot, 4 C. & P. 230 Reeve v. Berridge, 20 Q. B. D. 52 36 W. R. 517	7007 C. 415 D. 464; 588 96 7 58 49 L. 	53 L	J. Ch	205; 5 205; 5 5; 42 1	L. T.	12 566, 56 7 880; 1 880, 45 37 258, 26 24 49 238, 48 25 18 5511; 458, 45 32 58 174, 49 47 836; 42
Rawlinson v. Marriott, 16 L. T. 2 Rawson v. Eicke, 7 A. & E. 451 Rawstorne v. Bentley, 4 Bro. C. C Ray's Settled Estate, Re, 25 Ch. I 32 W. R. 458 Raymond v. Fitch, 2 Cr. M. & R. Rayner v. Stone, 2 Eden, 128 Read v. Burley, Cro. Eliz. 549, 56 Read v. Lawnse, Dyer, 212 b Readshaw v. Balders, 4 Taunt. 57 Reddell v. Stowey, 2 Moo. & R. 3 Reddin v. Jarman, 16 L. T. 449 Rede v. Farr, 6 M. & S. 121 Redden v. Berry, 5 Q. B. D. 184; 28 W. R. 423 Red v. Thoyts, 6 M. & W. 410 Rees v. Davies, 4 C. B. N. S. 56 Rees v. King, Forrest, 19 Rees v. Perrot, 4 C. & P. 230 Reeve v. Berridge, 20 Q. B. D. 52 36 W. R. 517 Reeve v. Bird, 1 C. M. & R. 31	7007 C. 415 D. 464; 588 96 7 58 49 L. 	53 L J. Q	J. Ch	205; 5 5; 42 1	L. T.	12 566, 56 7 880; 1 380, 45 37 258, 26 24 49 238, 48 18 511; 458, 45 58 174, 49 47 836; 42 236, 45
Rawlinson v. Marriott, 16 L. T. 2 Rawson v. Eicke, 7 A. & E. 451 Rawstorne v. Bentley, 4 Bro. C. C Ray's Settled Estate, Re, 25 Ch. I 32 W. R. 458 Raymond v. Fitch, 2 Cr. M. & R. Rayner v. Stone, 2 Eden, 128 Read v. Burley, Cro. Eliz. 549, 58 Read v. Lawnse, Dyer, 212 b Readshaw r. Balders, 4 Taunt. 57 Reddell v. Stowey, 2 Moo. & R. 3 Reddin v. Jarman, 16 L. T. 449 Rede v. Farr, 6 M. & S. 121 Redpath v. Roberts, 3 Esp. 225 Reece v. Strousberg, 54 L. T. 133 Reed v. Deere, 7 B. & C. 261 Reed v. Harvey, 5 Q. B. D. 184; 28 W. R. 423 Reed v. Thoyts, 6 M. & W. 410 Rees v. Davies, 4 C. B. N. S. 56 Rees v. King, Forrest, 19 Reese v. Berridge, 20 Q. B. D. 52 36 W. R. 517 Reeve v. Bird, 1 C. M. & R. 31 Reeve v. Gibson, '91, 1 Q. B. 652	588 588 588 588 588 588 588 588 5	53 L	J. Ch	205; 5 5; 42 1	L. T	12 566, 56 7 6 80; 1 380, 45 25 24 25 18 511; 458, 45 42 47 836; 42 236, 48 20 31
Rawlinson v. Marriott, 16 L. T. 2 Rawson v. Eicke, 7 A. & E. 451 Rawstorne v. Bentley, 4 Bro. C. C Ray's Settled Estate, Re, 25 Ch. I 32 W. R. 458 Raymond v. Fitch, 2 Cr. M. & R. Rayner v. Stone, 2 Eden, 128 Read v. Burley, Cro. Eliz. 549, 58 Read v. Lawnse, Dyer, 212 b Readshaw v. Balders, 4 Taunt. 57 Reddell v. Stowey, 2 Moo. & R. 3 Reddin v. Jarman, 16 L. T. 449 Rede v. Farr, 6 M. & S. 121 Redpath v. Roberts, 3 Esp. 225 Recce v. Strousberg, 54 L. T. 133 Reed v. Deere, 7 B. & C. 261 Reed v. Harvey, 5 Q. B. D. 184; 28 W. R. 423 Reed v. Thoyts, 6 M. & W. 410 Rees v. Davies, 4 C. B. N. S. 56 Rees v. King, Forrest, 19 Rees v. Perrot, 4 C. & P. 230 Reeve v. Berridge, 20 Q. B. D. 52 36 W. R. 517 Reeve v. Gibson, '91, 1 Q. B. 652 Reeves v. Cattell, 24 W. R. 485	7007 C. 415 D. 464; 588 588 558 558 49 L 28; 57 ; 60 L	53 L 53 L J. Q J. Q.	J. Ch	205; 5 5; 42 1	L. T. 4	12 566, 56 7 80; 7 880; 37 258, 26 24 38 25 11 49 238, 48 25 18 5511; 458, 45 32 58 174, 49 47 886; 42 236, 49 20 36
Rawlinson v. Marriott, 16 L. T. 2 Rawson v. Eicke, 7 A. & E. 451 Rawstorne v. Bentley, 4 Bro. C. C Ray's Settled Estate, Re, 25 Ch. I 32 W. R. 458 Raymond v. Fitch, 2 Cr. M. & R. Rayner v. Stone, 2 Eden, 128 Read v. Burley, Cro. Eliz. 549, 56 Read v. Lawnse, Dyer, 212 b Readshaw v. Balders, 4 Taunt. 57 Reddell v. Stowey, 2 Moo. & R. 3 Reddin v. Jarman, 16 L. T. 449 Rede v. Farr, 6 M. & S. 121 Redpath v. Roberts, 3 Esp. 225 Reece v. Strousberg, 54 L. T. 133 Reed v. Deere, 7 B. & C. 261 Reed v. Harvey, 5 Q. B. D. 184; 28 W. R. 423 Reds v. Thoyts, 6 M. & W. 410 Rees v. Davies, 4 C. B. N. S. 56 Rees v. King, Forrest, 19 Rees v. Perrot, 4 C. & P. 230 Reeve v. Bird, 1 C. M. & R. 31 Reeve v. Bird, 1 C. M. & R. 31 Reeve v. Gibson, '91, 1 Q. B. 652 Reeves v. Cattell, 24 W. R. 485 Reeves v. Gill, 1 Beav. 375	7007 C. 415 D. 464; 588 56 7 58 49 L. 	53 L	J. Ch	205; 5 5; 42 1	L. T	12 566, 56 7 80; 1 380, 45 37 258, 26 24 49 238, 48 25 18 511; 458, 45 47 836; 42 236, 49 220 31 49
Regent United Service Stores. Re.	8 Ch.	D. 61	6:47	L. J. C	h. 677	: 38
Regent United Service Stores. Re.	8 Ch.	D. 61	6:47	L. J. C	h. 677	: 38
Regent United Service Stores. Re.	8 Ch.	D. 61	6:47	L. J. C	h. 677	: 38
Ramsbottom v. Mortley, 2 M. & S. Raunsbottom v. Tunbridge, 2 M. & S. Raunsbottom v. Tunbridge, 2 M. & S. Raunsbottom v. Tunbridge, 2 M. & S. Raunsbottom v. Dyson, L. R. 1 H. I. 926	8 Ch.	D. 61	6:47	L. J. C	h. 677	: 38

Reid v. Reid, 31 Ch. D. 402; 5	K T. 1	r	904 •	54 T. T	100 .	94 W		AGE
								16
Reid v. Tenterden, 4 Tvr. 111							•••	453
		11 C	h. D.	866; 4	8 L. J.	Ch. 8	30·;	439
At L. T. 116; 28 W. R. 9 Rendall v. Andreæ, 61 L. J. Q. Rendell v. Roman, 9 T. L. R. 1 Renner v. Tolley, 68 L. T. 815 Revell v. Hussey, 2 Ball. & B. Reynard v. Arnold, 10 Ch. 386 Reynel's Case, 9 Rep. 95 a	R 6	30	•••	•••	•••	•••	 452,	
Rendell v. Roman, 9 T. L. R.	192		•••		•••	•••	85,	
Renner v. Tolley, 68 L. T. 815			•••	•••	•••	•••	•••	66
Revell v. Hussey, 2 Ball. & B.	280	 W D		•••	•••	•••		418
Revnel's Case. 9 Ren. 95 a	; 20	W. D	. 002	•••	•••	•••		166 3
Reynel's Case, 9 Rep. 95 a Reynolds v. Ashby & Son, '03	, 1 K	В. 8	7; '0	4, W. 1	N. 166	; 78 L	. J.	•
Reynel's Case, 9 Rep. 95 a Reynolds v. Ashby & Son, '03 K. B. 946; 20 L. T. R. 7. Reynolds v. Barford, 7 M. & G Reynolds v. Barford, 7 M. & G Reynolds v. Waring, 1 Yo. 34 Rhodes v. Bullard, 7 East, 116 Rich v. Basterfield, 4 C. B. 78; Rich v. Jackson, 4 Bro. C. C. 5 Rich v. Woolley, 7 Bing, 651 Richards v. Bluck, 6 C. B. 43; Richards v. Crawshay, 8 T. L. Richards v. Crawshay, 8 T. L. Richards v. North London Rai Richards v. North London Rai Richards v. Royne, 2 Mod. 80 Richardson, Re, 16 Ch. D. 613 Richardson v. Chasen, 10 Q. E Richardson v. Chasen, 3 Madd.	66 .		···	<u>`</u>		514,	521,	522
Reynolds v. Bartord, 7 M. & G.	r. 449 > <i>a</i> 41	; 18	L.J.	C. P. 1	77;8	Jur. 96	1	318
Reynolds v. Waring, 1 Yo. 346	P. 041		•••	•••	•••	•••	•••	111
Rhodes v. Bullard, 7 East, 116		••	•••	•••	•••	•••	•••	158
Rich v. Basterfield, 4 C. B. 783	3; 16	L. J.	C. P.	273; 1	1 Jur.	696	•••	335
Rich v. Jackson, 4 Bro. C. C. 5	14 .	••	•••	•••	•••	•••	070	127
Richards v. Bluck. 6 C. B. 432	7:18	 L. J.	с. Р.	15: 12	Jpr. 9	68	2/2,	372
Richards v. Crawshay, 8 T. L.	R. 44	6			•••	•••	•••	421
Richards v. Easto, 15 M. & W.	244.	··		•••	•••	•••	•••	333
Richards v. North London Rai	ıl. Co.	, 20 Y	w. R.	194	•••	•••	•••	111
Richardson Re 16 Ch D 613	. 44	 Т. Т.	282 .	29 W	R. 899	•••	•••	459
Richardson v. Chasen, 10 Q. H	3, 756					•••		116
Richardson v. Evans, 3 Madd.	218 .	••	•••	•••	•••	•••		423
Richardson v. Gifford, 1 A. &	E. 52.		•••	•••	•••	9	4, 97,	125
Richardson v. Chasen, 10 Q. E Richardson v. Evans, 3 Madd. Richardson v. Gifford, 1 A. & Richardson v. Langridge, 4 Ta Richardson v. Sydenham, 2 Ve Richmond, Justices of, Re, 10 Rickett v. Tullick, 6 C. & P. 6 Ricketts v. Bell, 1 De G. & Sn Ricketts v. Weaver, 12 M. & V Riddell v. Durnford, 37 Sol. J	ent.	120 17	•••	•••	•••	•••	91, 92	447
Richmond, Justices of, Re. 10	T. L.	R. 6	B		•••	•••	•••	581
Rickett v. Tullick, 6 C. & P. 6	36	•••		•••	•••	•••	•••	466
Ricketts v. Bell, 1 De G. & Sn	n. 335	; 11	Jur. 9	18		. •••	56,	118
Riddell v. Durnford, 37 Sol. J	011 TO	8; 18 987	L. J.	EX. 18	····	•••	•••	165
Riddell v. Errington, 26 Ch. I). 220	; 54	ï. J.	Ch. 29	3;50	L. T. 8	584;	100
32 W. R. 680							•••	18
Ridge, Re, 31 Ch. D. 504; 55	L. J.	Ch.	265;	54 L. T			. R.	47
159 Ridgway v. Sneyd, Kay, 627	•	•••	•••	•••	•••	•••	•••	204
m 1								303
Ridgway v. Stafford, 6 Ex. 40 Ridgway v. Wharton, 3 D. M. 46; 4 Jur. N. S. 173	. & G.	677;	6 H.	L. C. 2	238 ; 2	7 L.J.	Ch.	
46; 4 Jur. N. S. 173			T 'OL	000.	 Db. 4	70	, 104,	
Rigby v. Great Western Rail. 531; 1 Coop. C. C. 3; 4 Riggs, Re, Ex parte Lovell, '(L. T. 428; 49 W. R. 624 Right v. Bawden, 3 East, 260 Right v. Beard, 13 East, 210 Right v. Cuthell, 5 East, 491 Right v. Darby, 1 T. R. 159 Right v. Thomas, 3 Burr. 144 Rinnmer v. Knowles, 22 W. R Ringer v. Cann, 3 M. & W. 3 Riseley v. Ryle, 10 M. & W.	Co., I	Сац	J. Un. 491	200;	2 Pn. 4	4; 10	Jur.	122
Riggs, Re, Ex parte Lovell, '(01, 2	K. B	. 16;	70 L.	J. K.	B. 541	; 84	124
L. T. 428; 49 W. R. 624	; 8 A	fanso	n, 233		•••	420	, 506,	509
Right v. Bawden, 3 East, 260		•••	•••	•••	•••	•••	•••	96
Right v. Beard, 13 East, 210		•••	•••	•••	•••	•••	•••	92 478
Right v. Darby, 1 T. R. 159		•••	•••	•••	92, 1	 48. 466	469.	481
Right v. Thomas, 3 Burr. 144	1	•••	•••	•••	•••	•••	• • • •	130
Rimmer v. Knowles, 22 W. R	. 574	•••	•••	•••	•••	•••	•••	71
Riseley v. Ryle, 10 M. & W.	48 101 •	 11 <i>Th</i>	16.	19 []	i Rv s	8 399	•••	432 317,
Riseley v. Ryle, 10 M. & W.	101 ,	11 10	. 10,	12 11, 0	. DA. c	0, 022		, 3 17,
River Swale Brick Works, I	æ, 52	L. J	. Ch.	638;	48 L.	T. 778		
W. R. 202	••		D 4	0 E -		, . .		278
Roads v. Overseers of Trump	nngto	n, L.	n. 6	ų. в. 5	D; 40	L. J. D	1. U. gr	215
Roberts v. Karr. 1 Taunt. 495	·· 5	•••	•••	•••	•••	•••		134
Robbins v. James, 15 C. B. N	. S. 2	21	•••	•••	•••	•••		134 335
35; 23 L. T. 321 Roberts v. Karr, 1 Taunt. 495 Robbins v. James, 15 C. B. N Roberts v. Barker, 1 Cr. & M	. 808	•••		•••	•••	9	7, 369	, 534

Roberts v. Brett, 11 H. L. C. 337									
Roberts v. Hayward, 3 C. & P. 482 144 Roberts v. Hayward, 3 C. & P. 482 474 Roberts v. Holland, 93, 1 Q. B. 665; 62 L. J. Q. B. 621; 41 W. R. 494 161, 448 Roberts v. Jackson, Peake, Add. Cas. 36 266 Roberts v. Jackson, Peake, Add. Cas. 36 283 Roberts v. Potts, '94, 1 Q. B. 213; 68 L. J. Q. B. 381; 69 L. T. 849; 42 W. R. 294 Roberts v. Tregaskis, 38 L. T. 176 149, 446 Roberts or Tregaskis, 38 L. T. 176 149, 446 Robins v. Cox, 1 Lev. 22 226 Robinson v. Harman, 1 Ex. 850; 18 L. J. Ex. 202 18 Robinson v. Horman, 4 Bing. 562 225, 255 Robinson v. Horman, 4 Bing. 562 225, 255 Robinson v. Horman, 1 Ex. 850; 18 L. J. Ch. 392; 61 L. T. 60; 37 W. R. 546 397, 399, 401 Robinson v. Macdonnell, 5 M. & S. 228 178 Robinson v. Macdonnell, 5 M. & S. 228 178 Robinson v. Waddington, 13 Q. B. 753; 18 L. J. Q. B. 260; 13 Jur. 587 301	Dahanta a Duntt 11 W I C	997						P	
Roberts v. Haines, 6 E. & B. 643	Polarte of Davey A R & Ad	. 331 RRA	•••	•••	•••	•••		914	
Roberts v. Hayward, 3 C. & P. 482	Roberts v. Haines, 6 E. & B.	643	•••	•••	•••	•••			
Roberts v. Holland, '98, 1 Q. B. 665; 62 L. J. Q. B. 621; 41 W. R. 494	Roberts v. Hayward, S.C. &	P. 432	2						
194	Roberts v. Holland, '93, 1 Q	. В. 6	65; 62	L. J.	Q. B.	621 :	41 W.	R.	
Roberts v. Potts, '94, 1 Q. B. 213; 63 L. J. Q. B. 381; 69 L. T. 849; 42 W. R. 294	494	• • •	•••	•••		•••	•••	161,	
## Ag W. R. 294					•••	•••	•••		266
W. R. 545 Robinson v. Learoyd, 7 M. & W. 48 Robinson v. Macdonnell, 5 M. & S. 228	Roberts v. Potts, '94, 1 Q. B	5. 213	; 68 L	. J. Q.	B. 381	; 69 L	. T. 8		000
W. R. 545 Robinson v. Learoyd, 7 M. & W. 48 Robinson v. Macdonnell, 5 M. & S. 228	Pohorte a Troppelie 28 I. T	 178	•••	•••	•••	•••	•••		
W. R. 545 Robinson v. Learoyd, 7 M. & W. 48 Robinson v. Macdonnell, 5 M. & S. 228	Robertson and Thorne. Ro. 4	7 J. F	P. 566	•••	•••	•••	•••		
W. R. 545 Robinson v. Learoyd, 7 M. & W. 48 Robinson v. Macdonnell, 5 M. & S. 228	Robins v. Cox. 1 Lev. 22								
W. R. 545 Robinson v. Learoyd, 7 M. & W. 48 Robinson v. Macdonnell, 5 M. & S. 228	Robinson's Settled Estates, A	Re, 38	Sol. Jo	urn. 8	25		•••		
W. R. 545 Robinson v. Learoyd, 7 M. & W. 48 Robinson v. Macdonnell, 5 M. & S. 228	Robinson v. Harman, 1 Ex.	850;	18 L. J	. Ex. 2	02	•••	•••	•••	115
W. R. 545 Robinson v. Learoyd, 7 M. & W. 48 Robinson v. Macdonnell, 5 M. & S. 228	Robinson v. Hofman, 4 Bing	. 562	•••		•••		•••	225,	255
Robinson v. Macdonnell, 5 M. & S. 228	210 12110011 01 2221 0119 22 021	D. 88	; 58 L	. J. Ch	. 392 ;	g1 1".	T. 60 ;	87	401
Solution Robson v Flight, 4 D. J. & S. 608; 34 L. J. Ch. 226	W. K. 040	. 337 4	•••	•••	•••	•••	397,	399,	401 587
Solution Robson v Flight, 4 D. J. & S. 608; 34 L. J. Ch. 226	Pobinson v. Learoyd, / M. &	W. 4	298	•••	•••	•••	•••	•••	178
Solution Robson v Flight, 4 D. J. & S. 608; 34 L. J. Ch. 226	Robinson v. Milne: 58 L. J.	Ch. 10	070		•••	•••		144.	
Solution Robson v Flight, 4 D. J. & S. 608; 34 L. J. Ch. 226	Robinson v. Rosher, 1 Y. &	C. C.	C. 7	•••	•••	•••	•••	,	
Solution Robson v Flight, 4 D. J. & S. 608; 34 L. J. Ch. 226	Robinson v. Waddington, 13	Q. B.	. 753 ;	18 L. J	Q. B.	250;1	Jur.	587	3 01
536	TOURUH, Me, 40 CH. D. 11, t	ло щ. «	9. OII.	<i>021</i> , 0	U 14. I.	0,2,	9 0 11.	44.	
Rochefoucauld v. Boustead, '97, 1 Ch. 196; 66 L. J. Ch. 74; 75 L. T. 502; 45 W. R. 272	586	···				•••	•••	•••	
Rochefoucauld v. Boustead, '97, 1 Ch. 196; 66 L. J. Ch. 74; 75 L. T. 502; 45 W. R. 272	Robson v. Flight, 4 D. J. &	S. 608	3; 34 L	. J. Cl	1. 226	•••	•••	•••	
502; 45 W. R. 272	Robson v. Palace Chambers	CO., I	4 T. L.	K. 20	T (₩ 74 .	 75 T	т	401
Rock Portland Cement Co. v. Wilson, 52 L. J. Ch. 214; 48 L. T. 886; 31 W. R. 193 109, 122 Rocke v. Hills, 3 T. L. R. 298				0,00	ш. э. (Ju. 74 ,	10 L.	106	120
109, 122 Rocke v. Hills, 3 T. L. R. 298	Rock Portland Cement Co. v	 Wils	non. 52	i. J. (Ch. 214	: 48 I	T. 8	86:	120
Rockingham v. Penrice, 1 P. Wms. 177; 1 Swanst. 340, n.	81 W. R. 193	• • • • • • • • • • • • • • • • • • • •				•••	•••		122
Rockingham v. Penrice, 1 P. Wms. 177; 1 Swanst. 340, n.	Rocke v. Hills, 3 T. L. R. 29	98							
Rodger v. Harrison, '98, 1 Q. B. 161; 62 L. J. Q. B. 213; 68 L. T. 66; 41 W. R. 291					•••				
## Rodgers v. Parker, 18 C. B. 112; 25 L. J. C. P. 220; 2 Jur. N. S. 496	Rockingham v. Penrice, 1 P.	Wms	. 177 ;	1 Swar	nst. 34	5, n.	•••		228
Rodgers v. Parker, 18 C. B. 112; 25 L. J. C. P. 220; 2 Jur. N. S. 496 305, 306, 316 Rodmel v. Eden, 1 F. & F. 542	Rockingham v. Penrice, 1 P. Roden v. Evton, 6 C. B. 427	: 18]	L. J. C.	P. 1;	12 Jur	o, n. ·. 921	287,	300,	22 3 303
Roe v. Summerset, 2 W. Bl. 692	Rockingham v. Penrice, 1 P. Roden v. Eyton, 6 C. B. 427 Rodger v. Harrison, '98, 1 Q.	; 18] B. 1	L. J. C. 61; 62	P. 1; L. J. (12 Jur Q. B. 2	o, n. ·. 921 13 ; 68	287, L. T.	 300, 66 ;	228 303
Roe v. Summerset, 2 W. Bl. 692	Rockingham v. Penrice, 1 P. Roden v. Eyton, 6 C. B. 427 Rodger v. Harrison, '98, 1 Q.	; 18] B. 1	L. J. C. 61; 62	P. 1; L. J. (12 Jur Q. B. 2	o, n. ·. 921 13 ; 68	287, L. T.	 300, 66 ;	228 303
Roe v. Summerset, 2 W. Bl. 692	Rockingham v. Penrice, 1 P. Roden v. Eyton, 6 C. B. 427 Rodger v. Harrison, '98, 1 Q.	; 18] B. 1	L. J. C. 61; 62	P. 1; L. J. (12 Jur Q. B. 2	o, n. ·. 921 13 ; 68	287, L. T.	 300, 66 ;	228 303
Roe v. Summerset, 2 W. Bl. 692	Rockingham v. Penrice, 1 P. Roden v. Eyton, 6 C. B. 427 Rodger v. Harrison, '98, 1 Q.	; 18] B. 1	L. J. C. 61; 62	P. 1; L. J. (12 Jur Q. B. 2	o, n. ·. 921 13 ; 68	287, L. T.	 300, 66 ;	228 303
Roe v. Summerset, 2 W. Bl. 692	Rockingham v. Penrice, 1 P. Roden v. Eyton, 6 C. B. 427 Rodger v. Harrison, '98, 1 Q.	; 18] B. 1	L. J. C. 61; 62	P. 1; L. J. (12 Jur Q. B. 2	o, n. ·. 921 13 ; 68	287, L. T.	 300, 66 ;	228 303
Roe v. Summerset, 2 W. Bl. 692	Rockingham v. Penrice, 1 P. Roden v. Eyton, 6 C. B. 427 Rodger v. Harrison, '98, 1 Q.	; 18] B. 1	L. J. C. 61; 62	P. 1; L. J. (12 Jur Q. B. 2	o, n. ·. 921 13 ; 68	287, L. T.	 300, 66 ;	228 303
Roe v. Summerset, 2 W. Bl. 692	Rockingham v. Penrice, 1 P. Roden v. Eyton, 6 C. B. 427 Rodger v. Harrison, '98, 1 Q.	; 18] B. 1	L. J. C. 61; 62	P. 1; L. J. (12 Jur Q. B. 2	o, n. ·. 921 13 ; 68	287, L. T.	 300, 66 ;	228 303
Roe v. Summerset, 2 W. Bl. 692	Rockingham v. Penrice, 1 P. Roden v. Eyton, 6 C. B. 427 Rodger v. Harrison, '98, 1 Q.	; 18] B. 1	L. J. C. 61; 62	P. 1; L. J. (12 Jur Q. B. 2	o, n. ·. 921 13 ; 68	287, L. T.	 300, 66 ;	228 303
Roe v. Summerset, 2 W. Bl. 692	Rockingham v. Penrice, 1 P. Roden v. Eyton, 6 C. B. 427 Rodger v. Harrison, '98, 1 Q.	; 18] B. 1	L. J. C. 61; 62	P. 1; L. J. (12 Jur Q. B. 2	o, n. ·. 921 13 ; 68	287, L. T.	 300, 66 ;	228 303
Roe v. Summerset, 2 W. Bl. 692	Rockingham v. Penrice, 1 P. Roden v. Eyton, 6 C. B. 427 Rodger v. Harrison, '98, 1 Q.	; 18] B. 1	L. J. C. 61; 62	P. 1; L. J. (12 Jur Q. B. 2	o, n. ·. 921 13 ; 68	287, L. T.	 300, 66 ;	228 303
Roe v. Summerset, 2 W. Bl. 692	Rockingham v. Penrice, 1 P. Roden v. Eyton, 6 C. B. 427 Rodger v. Harrison, '98, 1 Q.	; 18] B. 1	L. J. C. 61; 62	P. 1; L. J. (12 Jur Q. B. 2	o, n. ·. 921 13 ; 68	287, L. T.	 300, 66 ;	228 303
Roe v. Summerset, 2 W. Bl. 692	Rockingham v. Penrice, 1 P. Roden v. Eyton, 6 C. B. 427 Rodger v. Harrison, '98, 1 Q.	; 18] B. 1	L. J. C. 61; 62	P. 1; L. J. (12 Jur Q. B. 2	o, n. ·. 921 13 ; 68	287, L. T.	 300, 66 ;	228 303
Roe v. Summerset, 2 W. Bl. 692	Rockingham v. Penrice, 1 P. Roden v. Eyton, 6 C. B. 427 Rodger v. Harrison, '98, 1 Q.	; 18] B. 1	L. J. C. 61; 62	P. 1; L. J. (12 Jur Q. B. 2	o, n. ·. 921 13 ; 68	287, L. T.	 300, 66 ;	228 303
Roe v. Summerset, 2 W. Bl. 692	Rockingham v. Penrice, 1 P. Roden v. Eyton, 6 C. B. 427 Rodger v. Harrison, '98, 1 Q.	; 18] B. 1	L. J. C. 61; 62	P. 1; L. J. (12 Jur Q. B. 2	o, n. ·. 921 13 ; 68	287, L. T.	 300, 66 ;	228 303
Roe v. Summerset, 2 W. Bl. 692	Rockingham v. Penrice, 1 P. Roden v. Eyton, 6 C. B. 427 Rodger v. Harrison, '98, 1 Q.	; 18] B. 1	L. J. C. 61; 62	P. 1; L. J. (12 Jur Q. B. 2	o, n. ·. 921 13 ; 68	287, L. T.	 300, 66 ;	228 303
Roe v. Summerset, 2 W. Bl. 692	Rockingham v. Penrice, 1 P. Roden v. Eyton, 6 C. B. 427 Rodger v. Harrison, '98, 1 Q.	; 18] B. 1	L. J. C. 61; 62	P. 1; L. J. (12 Jur Q. B. 2	o, n. ·. 921 13 ; 68	287, L. T.	 300, 66 ;	228 303
Roe v. Ward, 1 H. Bl. 97	Rockingham v. Penrice, I. P. Roden v. Eyton, 6 C. B. 427 Rodger v. Harrison, '93, 1 Q. 41 W. R. 291 Rodgers v. Parker, 18 C. B. 496 Rodmel v. Eden, 1 F. & F. 5. Roe v. Charnock, Peake, N. Roe v. Davis, 7 East, 363 Roe v. Doe, 6 Bing, 574 Roe v. Galliers, 2 T. R. 133 Roe v. Harrison, 2 T. R. 425 Roe v. Havley, 12 East, 464 Roe v. Lees, 2 W. Bl. 1171 Roe v. Minshall, Bull. N. P. Roe v. Paine, 2 Camp. 520 Roe v. Pierce, 2 Camp. 96 Roe v. Prideaux, 10 East, 15 Roe v. St. Dunstan in Kent, Roe v. Sales, 1 M. & S. 297 Roe v. Siddons, 22 Q. B. D.	96	L. J. C. 61; 62; 25 L 4 4	J. C	nst. 34:	., n	287, L. T. (300, 866; S. 306, 421, 436, 473,	223 303 430 316 71 466 181 469 168 500 482 92 501 476 53 491 413 138
Rogers v. Hosegood, '00, 2 Ch. 388; 09 L. 3. Ch. 532; 33 L. 1. 186; 48 W. R. 659; 16 T. L. R. 20 136, 363, 434, 439, 445 Rogers v. Humphreys, 4 A. & E. 299 67, 224, 225, 252 Rogers v. Kingston Dock Co., 34 L. J. Ch. 165; 11 L. T. 42; 12 W. R.	Rockingham v. Penrice, I. P. Roden v. Eyton, 6 C. B. 427 Rodger v. Harrison, '93, 1 Q. 41 W. R. 291 Rodgers v. Parker, 18 C. B. 496 Rodmel v. Eden, 1 F. & F. 5. Roe v. Charnock, Peake, N. Roe v. Davis, 7 East, 363 Roe v. Doe, 6 Bing, 574 Roe v. Galliers, 2 T. R. 133 Roe v. Harrison, 2 T. R. 425 Roe v. Havley, 12 East, 464 Roe v. Lees, 2 W. Bl. 1171 Roe v. Minshall, Bull. N. P. Roe v. Paine, 2 Camp. 520 Roe v. Pierce, 2 Camp. 96 Roe v. Prideaux, 10 East, 15 Roe v. St. Dunstan in Kent, Roe v. Sales, 1 M. & S. 297 Roe v. Siddons, 22 Q. B. D.	96	L. J. C. 61; 62; 25 L 4 4	J. C	nst. 34:	., n	287, L. T. (300, 866; S. 306, 421, 436, 473,	228 303 430 316 71 466 181 469 168 500 482 92 501 502 476 53 491 413 138
Rogers v. Hosegood, '00, 2 Ch. 388; 09 L. 3. Ch. 532; 33 L. 1. 186; 48 W. R. 659; 16 T. L. R. 20 136, 363, 434, 439, 445 Rogers v. Humphreys, 4 A. & E. 299 67, 224, 225, 252 Rogers v. Kingston Dock Co., 34 L. J. Ch. 165; 11 L. T. 42; 12 W. R.	Rockingham v. Penrice, I. P. Roden v. Eyton, 6 C. B. 427 Rodger v. Harrison, '93, 1 Q. 41 W. R. 291 Rodgers v. Parker, 18 C. B. 496 Rodmel v. Eden, 1 F. & F. 5. Roe v. Charnock, Peake, N. Roe v. Davis, 7 East, 363 Roe v. Doe, 6 Bing, 574 Roe v. Galliers, 2 T. R. 133 Roe v. Harrison, 2 T. R. 425 Roe v. Havley, 12 East, 464 Roe v. Lees, 2 W. Bl. 1171 Roe v. Minshall, Bull. N. P. Roe v. Paine, 2 Camp. 520 Roe v. Pierce, 2 Camp. 96 Roe v. Prideaux, 10 East, 15 Roe v. St. Dunstan in Kent, Roe v. Sales, 1 M. & S. 297 Roe v. Siddons, 22 Q. B. D.	96	L. J. C. 61; 62; 25 L 4 4	J. C	nst. 34:	., n	287, L. T. (300, 866; S. 306, 421, 436, 473,	223 303 430 316 71 466 181 469 168 500 482 92 501 476 53 491 413 138
Rogers v. Hosegood, '00, 2 Ch. 388; 09 L. 3. Ch. 532; 33 L. 1. 186; 48 W. R. 659; 16 T. L. R. 20 136, 363, 434, 439, 445 Rogers v. Humphreys, 4 A. & E. 299 67, 224, 225, 252 Rogers v. Kingston Dock Co., 34 L. J. Ch. 165; 11 L. T. 42; 12 W. R.	Rockingham v. Penrice, I. P. Roden v. Eyton, 6 C. B. 427 Rodger v. Harrison, '93, 1 Q. 41 W. R. 291 Rodgers v. Parker, 18 C. B. 496 Rodmel v. Eden, 1 F. & F. 5. Roe v. Charnock, Peake, N. Roe v. Davis, 7 East, 363 Roe v. Doe, 6 Bing, 574 Roe v. Galliers, 2 T. R. 133 Roe v. Harrison, 2 T. R. 425 Roe v. Havley, 12 East, 464 Roe v. Lees, 2 W. Bl. 1171 Roe v. Minshall, Bull. N. P. Roe v. Paine, 2 Camp. 520 Roe v. Pierce, 2 Camp. 96 Roe v. Prideaux, 10 East, 15 Roe v. St. Dunstan in Kent, Roe v. Sales, 1 M. & S. 297 Roe v. Siddons, 22 Q. B. D.	96	L. J. C. 61; 62; 25 L 4 4	J. C	nst. 34:	., n	287, L. T. (300, 866; S. 306, 421, 436, 473,	223 303 430 316 71 466 181 469 168 500 482 92 501 476 53 491 413 138
Rogers v. Hosegood, '00, 2 Ch. 388; 09 L. 3. Ch. 532; 33 L. 1. 186; 48 W. R. 659; 16 T. L. R. 20 136, 363, 434, 439, 445 Rogers v. Humphreys, 4 A. & E. 299 67, 224, 225, 252 Rogers v. Kingston Dock Co., 34 L. J. Ch. 165; 11 L. T. 42; 12 W. R.	Rockingham v. Penrice, I. P. Roden v. Eyton, 6 C. B. 427 Rodger v. Harrison, '93, 1 Q. 41 W. R. 291 Rodgers v. Parker, 18 C. B. 496 Rodmel v. Eden, 1 F. & F. 5. Roe v. Charnock, Peake, N. Roe v. Davis, 7 East, 363 Roe v. Doe, 6 Bing, 574 Roe v. Galliers, 2 T. R. 133 Roe v. Harrison, 2 T. R. 425 Roe v. Havley, 12 East, 464 Roe v. Lees, 2 W. Bl. 1171 Roe v. Minshall, Bull. N. P. Roe v. Paine, 2 Camp. 520 Roe v. Pierce, 2 Camp. 96 Roe v. Prideaux, 10 East, 15 Roe v. St. Dunstan in Kent, Roe v. Sales, 1 M. & S. 297 Roe v. Siddons, 22 Q. B. D.	96	L. J. C. 61; 62; 25 L 4 4	J. C	nst. 34:	., n	287, L. T. (300, 866; S. 306, 421, 436, 473,	223 303 430 316 71 466 181 469 168 500 482 92 501 476 53 491 413 138
Rogers v. Hosegood, '00, 2 Ch. 388; 09 L. 3. Ch. 532; 33 L. 1. 186; 48 W. R. 659; 16 T. L. R. 20 136, 363, 434, 439, 445 Rogers v. Humphreys, 4 A. & E. 299 67, 224, 225, 252 Rogers v. Kingston Dock Co., 34 L. J. Ch. 165; 11 L. T. 42; 12 W. R.	Rockingham v. Penrice, 1 P. Roden v. Eyton, 6 C. B. 427 Rodger v. Harrison, '93, 1 Q. 41 W. R. 291 Rodgers v. Parker, 18 C. B. 496 Rodmel v. Eden, 1 F. & F. 5. Roe v. Charnock, Peake, N. Roe v. Davis, 7 East, 363 Roe v. Doe, 6 Bing. 574 Roe v. Galliers, 2 T. R. 133 Roe v. Harrison, 2 T. R. 425 Roe v. Hayley, 12 East, 464 Roe v. Lees, 2 W. Bl. 1171 Roe v. Minshall, Bull. N. P. Roe v. Priceaux, 10 East, 15 Roe v. Priceaux, 10 East, 15 Roe v. Stleaux, 10 East, 15 Roe v. Stleat, 1 M. & S. 297 Roe v. Siddons, 22 Q. B. D. Roe v. Street, 2 A. & E. 329 Roe v. Summerset, 2 W. Bl. Roe v. Ward, 1 H. Bl. 97 Roe v. Wilkinson, cited Co. Roe v. York, Archbishop of,	wme; ; 18] . B. 1'	L. J. C. 61; 62;; 25 L 4 4	J. C	nst. 34:	, n	287, L. T ur. N 305, 420, 8 94, 97	300, 866; S. 306, 421, 436, 473, , 98, , 98, 489, 527.	223 303 430 316 71 466 181 469 168 500 482 92 501 476 53 491 413 138
Rogers v. Kingston Dock Co., 34 L. J. Ch. 160; 11 L. T. 42; 12 W. K.	Rockingham v. Penrice, 1 P. Roden v. Eyton, 6 C. B. 427 Rodger v. Harrison, '93, 1 Q. 41 W. R. 291 Rodgers v. Parker, 18 C. B. 496 Rodmel v. Eden, 1 F. & F. 5. Roe v. Charnock, Peake, N. Roe v. Davis, 7 East, 363 Roe v. Doe, 6 Bing. 574 Roe v. Galliers, 2 T. R. 133 Roe v. Harrison, 2 T. R. 425 Roe v. Hayley, 12 East, 464 Roe v. Lees, 2 W. Bl. 1171 Roe v. Minshall, Bull. N. P. Roe v. Priceaux, 10 East, 15 Roe v. Priceaux, 10 East, 15 Roe v. Stleaux, 10 East, 15 Roe v. Stleat, 1 M. & S. 297 Roe v. Siddons, 22 Q. B. D. Roe v. Street, 2 A. & E. 329 Roe v. Summerset, 2 W. Bl. Roe v. Ward, 1 H. Bl. 97 Roe v. Wilkinson, cited Co. Roe v. York, Archbishop of,	wme; ; 18] . B. 1'	L. J. C. 61; 62;; 25 L 4 4	J. C	nst. 34:	, n	287, L. T ur. N 305, 420, 8 94, 97	300, 866; S. 306, 421, 436, 473, , 98, , 98, 489, 527.	223 303 430 316 71 466 181 469 168 500 482 92 501 476 53 491 413 138
Rogers v. Kingston Dock Co., 34 L. J. Ch. 160; 11 L. T. 42; 12 W. K.	Rockingham v. Penrice, I. P. Roden v. Eyton, 6 C. B. 427 Rodger v. Harrison, '93, 1 Q. 41 W. R. 291 Rodgers v. Parker, 18 C. B. 496 Rodmel v. Eden, 1 F. & F. 5. Roe v. Charnock, Peake, N. Roe v. Davis, 7 East, 363 Roe v. Doe, 6 Bing, 574 Roe v. Galliers, 2 T. R. 133 Roe v. Harrison, 2 T. R. 425 Roe v. Havley, 12 East, 464 Roe v. Lees, 2 W. Bl. 1171 Roe v. Minshall, Bull. N. P. Hoe v. Paine, 2 Camp. 520 Roe v. Pierce, 2 Camp. 96 Roe v. Prideaux, 10 Rast, 15 Roe v. Sales, 1 M. & S. 297 Roe v. Siddons, 22 Q. B. D. Roe v. Street, 2 A. & E. 329 Roe v. Summerset, 2 W. Bl. Roe v. Ward, 1 H. Bl. 97 Roe v. Wilkinson, cited Co. Roe v. York, Archbishop of, Roffey v. Henderson, 17 Q. R Rogers v. Birkmire, Cas. tem	; 18] ; 18] ; 18] ; 18] ; 112 ;	L. J. C. 61; 62; 25 L 4 4 4	J. C	nst. 34: 112 Jur Q. B. 22: P. 22:	, n	287, L. T. C. S.	300, 866; S. 306, 421, 436, 473, 489, 527, 489, 66;	228 303 430 316 71 466 181 469 1500 482 92 500 476 53 491 491 466 491 528 270
1101: 18 W. R. 217 469	Rockingham v. Penrice, 1 P. Roden v. Eyton, 6 C. B. 427 Rodger v. Harrison, '93, 1 Q. 41 W. R. 291 Rodgers v. Parker, 18 C. B. 496 Rodmel v. Eden, 1 F. & F. 5. Roe v. Charnock, Peake, N. Roe v. Davis, 7 East, 363 Roe v. Doe, 6 Bing. 574 Roe v. Galliers, 2 T. R. 133 Roe v. Harrison, 2 T. R. 425 Roe v. Hayley, 12 East, 464 Roe v. Lees, 2 W. Bl. 1171 Roe v. Minshall, Bull. N. P. Roe v. Prideaux, 10 East, 15 Roe v. Prideaux, 10 East, 15 Roe v. Street, 2 A. & E. 3297 Roe v. Siddons, 22 Q. B. D. Roe v. Street, 2 A. & E. 3297 Roe v. Wilkinson, cited Co. Roe v. Ward, 1 H. Bl. 97 Roe v. Ward, 1 H. Bl. 97 Roe v. Wilkinson, cited Co. Roffey v. Henderson, 17 Q. F. Roggers v. Birkmire, Cas. tem Rogers v. Hosegood, '00, 2 (48 W. R. 659; 16 T. L.	wme; 181; 181; 181; 181; 181; 181; 181; 18	L. J. C. 61; 62; 25 L 4	J. C	nst. 34: 12 Jur Q. B. 2 P. 22: 	, n	287, L. T 287, L. T 305, 420, 420, 8 94, 97 8, 487, r. £4	300, 866; S.	228 303 430 316 71 466 181 469 1500 482 92 500 476 53 491 491 466 491 528 270
	Rockingham v. Penrice, 1 P. Roden v. Eyton, 6 C. B. 427 Rodger v. Harrison, '93, 1 Q. 41 W. R. 291 Rodgers v. Parker, 18 C. B. 496 Rodmel v. Eden, 1 F. & F. 5. Roo v. Charnock, Peake, N. Roe v. Davis, 7 East, 363 Roe v. Dec, 6 Bing. 574 Roe v. Galliers, 2 T. R. 133 Roe v. Harrison, 2 T. R. 425 Roe v. Hayley, 12 East, 464 Roe v. Lees, 2 W. Bl. 1171 Roe v. Minshall, Bull. N. P. Roe v. Paine, 2 Camp. 520 Roe v. Pierce, 2 Camp. 96 Roe v. Prideaux, 10 East, 15 Roe v. St. Dunstan in Kent, Roe v. Sales, 1 M. & S. 297 Roe v. Siddons, 22 Q. B. D. Roe v. Street, 2 A. & E. 329 Roe v. Summerset, 2 W. Bl. Roe v. Ward, 1 H. Bl. 97 Roe v. Wilkinson, cited Co. Roe v. York, Archbishop of, Roffey v. Henderson, 17 Q. F. Rogers v. Hosegood, '00, 2 C. 48 W. R. 659; 16 T. L. Rogers v. Hunphreys, 4 A. & Rogers v. Kingston Dock Co.	wmae; 18 1,	L. J. C. 61; 62; 25 L 4	J. C	nst. 34: 12 Jur Q. B. 2 P. 22: 	, n	287, L. T 287, L. T 305, 420, 420, 8 94, 97 8, 487, r. £4	300, 866; S.	228 303 430 316 71 466 181 469 1500 482 92 500 476 53 491 491 466 491 528 270

							AGE
Rogers v. Pitcher, 6 Taunt. 202	•••	•••	•••	•••	•••	78,	248
Rogers v. Pitcher, 6 Taunt. 202 Rogers v. Rice, '92, 2 Ch. 170; 61	l L. J.	Ch.	578;	86 L. T	. 640;	40	
							508
W. R. 489 Rolfe v. Peterson, 2 Bro. P. C. 486 Rollason v. Leon, 7 H. & N. 78; 8						227.	228
Rollsson v. Leon 7 H. & N 78: 8	T. J.	Ex	98 - 7	Jur. N.	808 8	80	124
Dalla m Millon 97 Ch D 71 . K	T. T	Ch	489 . 1	SO T. T	507	9.)	124
Rolls v. Miller, 27 Ch. D. 71; 58	, 14. J.	Ċп.	002;				oro
W. R. 806	***		. •••	•••	•••	857,	
Rolls v. Rock, 2 Selw. N. P. (18th	edition	124	4	•••		• • •	143
Rolph v. Crouch, L. R. 8 Ex. 44;	87 . L.	J. E	x. 8;]	17 L. T	. 249;	16	
W. R. 252	•••	•••	•••	•••	•••	•••	405
W. R. 252 Roper v. Bumford, 3 Taunt. 76 Roper v. Coombes, 6 B. & C. 534 Rorke v. Erriugton, 7 H. L. C. 617		• • •	•••	• •	•••	•••	228
Roper v. Coombes, 6 B. & C. 534						•••	118
Rorke v Errington 7 H. L. C. 617	,		•••			•••	132
Ross v. Fedden, L. R. 7 Q. B. 661		•••	•••	•••	•••		334
Pear (Farl of a Warren 1 Bro D	oe		•••	•••		•••	167
Ross (Earl of) v. Worsop, 1 Bro. P. Rosse (Earl of) r. Wainman, 14 M. Rossiter v. Miller, 3 App. Cas. 112	L 137	0 E O .	0.12	900	•••	•••	
Kosse (Lari of) T. Wallinan, 14 M.	σε vv.	ָ עסס	Z LX.	000			199
	4 ; 48	L. J.	Ch. 1	U; 39 1	. T. I	78;	
26 W. R. 865	•••	•••	•••	•••	103,	104,	109
26 W. R. 865 Rotherey v. Wood, 3 Camp. 24 Roundwood Colliery Co. Re '97 1	•••	•••		 	•••	•••	320
	Cn. 37	3: 60) la d.	Cn. 185	. 75 17	. Т.	
641 : 45 W. R. 324	•••	•••		21	í. 248.	270.	328
Roulston v. Clarke, 2 H. Bl. 563					-,,	,	248
Rousillon v. Rousillon, 14 Ch. D. &	251	•••	• • •	21	•••	•••	257
Dombatham a Wilson Q U T C C	101	•••	•••	•••	•••	•••	200
Rowbotham v. Wilson, 8 H. L. C. S Rows v. Young, 2 Br. & B. 165	20	•••	•••	•••	•••	•••	
Rowel v. Satchell, '03, 2 Ch. 212; Rowles v. Mason, Brown & G. Pai	***		•••	·		•••	228
Rowell v. Satchell, '03, 2 Ch. 212;	78 L:	J. Ch.	. 20; {	39 L. T.	267	•••	439
Rowles v. Mason, Brown. & G., Par	rt II., 1	192	•••	•••	•••	•••	28
Rowley v. Adams, 4 My. & Cr. 534	•••	•••	•••	•••		•••	454
Rowls v. Gells, Cowp. 451	•••			•••	•••	•••	387
Rubery v. Jervoise, 1 T. R. 229					•••	•••	167
Rubery v. Stevens 4 R & Ad 241	•••	•••	•••	•••			458
Rowe v. Young, 2 Br. & B. 165 ltowell v. Satchell, '03, 2 Ch. 212; Rowles v. Mason, Brown. & G., Pai Rowley v. Adams, 4 My. & Cr. 534 Rowls v. Gells, Cowp. 451 Rubery v. Jervoise, 1 T. R. 229 Rubery v. Stevens, 4 B. & Ad. 241 Russell, Exparte, 18 W. R. 758 Russell, Re, 29 Ch. D. 254 Russell v. Rider, 6 C. & P. 416 Russell v. Rider, 6 C. & P. 416	•••	•••	•••	•••	•••		259
Duranii Di OA (N. D. OFA	•••	•••	•••	•••	•••	•••	
Russell, Re, 29 Ch. D. 254 Russell v. Rider, 6 C. & P. 416	•••	•••	•••	•••	•••	•••	251
Russell v. Rider, 6 C. & P. 416 Russell v. Shoolbred, 29 Ch. D. 25			•••	•••	•••	284,	294
nassen v. onoordred, 28 cm. D. 20	4; 00:	La la	อบอ	***	•••	• • •	442
Russell v Stokes, 1 H. Bl. 562 Russell v Watts, 10 App. Cas. 590	•••	•••	•••	•••	•••		448
Russell v Watts, 10 App. Cas. 590	0;55	L. J.	Ch. 1	58 : 53	L. T. 8	376:	
34 W. R. 277						•••	140
34 W. R. 277 Rutherford v. Wilkie, 41 L. T. 435 Rutland's (Duke of) Settled Estate	S					•••	578
Rutland's (Duke of) Settled Estate	a Re	'00 S	Ch (908 · 80	т. т	Ch	0.0
ANS	,,	00, 2	· O	200 , 00		· 59	107
603 Ruttledge v. Whelan, 10 L. R. Ir. Rvall v. Rich, 10 East, 48	000	•••	•••	•••	•••	. 52,	
Ruttledge v. whelan, 10 L. R. Ir.	203	•••	•••	•••	•••	•••	505
					··· _	566	, 568
Ryan v. Mutual Tontine, &c., Ass	ociation	ı, '93	, 1 Ch.	116; 6	2 L. J.		
252; 67 L. T. 820; 41 W. R.	146	•••	•••	•••	•••	89,	, 843
Ryan v. Thompson, L. R. 3 C. P. 506; 16 W. R. 314	144;	87 L.	J. C.	P. 184	; 17 L	. T.	
506; 16 W. R. 314	•••		•••	•••		281	234
Ryan v. Shilcock, 7 Ex. 72; 15 Ju	r. 1200	1: 21	L. J. F	Cx. 55			283
Ryley v. Hicks, 1 Str. 651		,		-2.00	•••	•••	124
Rymer v. McIlroy, '97, 1 Ch. 528	. RR T.	1 0	1. 99 <i>8</i>	. 78 T			141
						-	
W. R. 411	•••	•••	•••	•••	•••	•••	94
- 11 T TT TT							
Sabin, Re, W. N. 1885, p. 197 Sacheverel v. Froggatt, 1 Vent. 16	•••		٠٠٠,	•••	•••	•••	46
Sacheverel v. Froggatt, 1 Vent. 16	51;2 \	Vms.	Saund.	. 367 a	•••	•••	152
Sachs v. Henderson, '02, 1 K. B.	612; 7	71 L.	J. K.	B. 392	: 86 I	L. T.	
437 : 50 W. R. 418					•••	•••	141
Sacker v. Chidley, 11 Jur. N. S. 68	54: 19	w r	690	•••			246
Sadler, Ex parte, 19 Ch. D. 122;	K1 T	T	201 .	80 W 1	7 179	•••	
Coffun's Case & Den 100 l.		. Oil	. 201;	OU 15.1	. I/O		458
Saffyn's Case, 5 Rep. 123 b		· · ·	 P 00		m		191
Saint v. Pilley, L. R. 10 Ex. 137	, 44 L	. J. J	LX. 33	; 33 L.	1. 93		
W. R. 753	***	·	•••				, 527
St. Albans (Bishop of) v. Buttersh	y, 8 Q.	. B. I). 859 ;	47 L. J	. Q. B.	571;	
38 L T. 685 ; 26 W. R. 679		•••	•••	•••	•••	•••	360
O4 Alb (D. l C - Will - 10)	P 4 04	20					

						_	
St. Albans v. Shore, 1 H. Bl. 270							AGE
St Cross of De Walden & T R 88	R		•••	•••	•••	•••	159 217
Sainter a Fermion 1 Mac & G. 2	88 · 7.	C B 7	 9 7	•••	•••	•••	163
Sainter v. Ferguson, 1 Mac. & G. 2: St. Germains (Earl of) v. Willan, 2 St. John's College v. Murcott, 7 T.	B. & (2. 216		•••	•••	•••	372
St. John's College v. Murcott. 7 T.	R. 25	9				•••	262
St. Saviour's, Southwark v. Smith,	3 Bur	. 1271	: 1 W.	Bl. 351			431
Salaman v. Glover, 20 Eq. 444;	4 L.	J. Cb.	551 : 3	2 L. T	. 792 :	23	
W. R. 722	•••	•••	•••	•••	•••		126
W. R. 722 Salamon v. Sopwith, 35 L. T. 826	,	•••	•••	•••	•••	•••	58
Sale v. Lambert, 18 Eq. 1; 43 L.	J. Ch.	470; 2	2 W. R	L 478	•••	•••	109
Sale v. Kitchingham, 10 Mod. 158	•••	•••	•••	•••	•••	•••	435
Sale v. Kitchingham, 10 Mod. 158 Salisbury's Case (Bishop ot), 10 Re	թ. 58 հ		•••	•••		4, 25	, 26
Salisbury, Re, Marquis of, 2 Ch. D	. 29;	45 L. J	. Ch. 2	50; 84	L. T.	5;	
23 W. R. 824	•••	•••	•••	•••	•••	•••	5
Salisbury v. Gladstone, 6 H. & N.	127	•••	•••	•••	•••	•••	199
Salisbury v. Gladstone, 6 H. & N. Salmon v. Matthews, 8 M. & W. 82 Salmon v. Smith, 1 Wms. Saund.	37		•••		•••	219,	240
Salmon v. Smith, I w ms. Saund.	200 (ea	. 18/1)	 70 FOO	. 44 337	 D 14		287
Salt, Re, '96, 1 Ch. 117; 65 L. J. Cl.	1. 152 ;	13 L.	1. 593	; 44 W.			, 13
Salter v. Grosvenor, 8 Mod. 308 Salter v. Metropolitan District Rail Saltoun v. Houstonn 1 Ring 438		o Fo	90	•••	•••	•••	30
Saltoun a Houstonn 1 Bing 433	i. Co.,	9 EM. 4	104	•••	•••	•••	135 153
Sampson a Easterby 9 R & C 50	 5 · R F	ing R	14	•••	 153,	 488	
Salter v. Grosvenor, 8 Mod. 308 Salter v. Metropolitan District Rai Saltoun v. Houstoun, 1 Bing. 433 Sampson v. Easterby, 9 B. & C. 50 Samuda v. Lawford, 4 Giff. 42 Sanders, Re, 54 L. J. Q. B. 381; 8 Sanders, Davis 15 Q. B. 281; 8		mg. v		•••			
Sanders. Rc. 54 L. J. O. B. 381 : 8	ii 1	. 516		•••			280
Sanders v. Davis. 15 O. B. D. 218	54 L	. J. Q.	B. 576	: 33 V	Ϋ. R. (355	522
Sanders v. Davis, 15 Q. B. D. 218 Sanders v. Karnell, 1 F. & F. 356				,		•••	97
Sanders v. Sanders, 19 Ch. D. 373	: 51 L	. J. Ch.	276 :	45 L. T	. 637 :	30	••
W. R. 280					'	572.	574
Sanderson v. Berwick-on-Tweed (M	layor o	of), 13	Q. B. I	D. 547 ;	53 L.	J.	
Q. B. 559; 51 L. T. 495; 33	W. K.	67	•••	•••	•••	400.	401
Sanderson v. Graves, L. R. 10 Ex.	. 234;	44 L.	J. Ex.	210;	33 I	T.	
269; 23 W. R. 797	•••	•••	•••	•••	•••	•••	107
Sandford v. Clarke, 21 Q. B. D. 39	8; 57	L. J. Q	B. 50	7;59 I	J. T. 22		
37 W. R. 28		::: -	;			94,	335
Sandill v. Franklin, L. R. 10 C. P	. 377;	44 L.	J. C. P	. 216;			470
309; 23 W. R. 473		т		10 T		147,	4/2
Sands to Thompson, 22 Ch. D. 614	; 52	L. J. (n. 400	; 48 L	. 1. 21	ιυ;	571
31 W. R. 397 Sandwell, Re 14 Q. B. D. 960; 54	T. T	 O B 9	 99 · K9	т. т	 809 .	99	9/1
W. R. 522	ш. у.	Q. D. o		ш. 1.	092;		458
Saner v. Bilton, 7 Ch. D. 815; 47 I	j. C}	267 :		. 281 ·	26 W	ж К	300
894				235	338	316.	348
Sangster v. Noy, 16 L. T. 157 Sangster v. Foster, Cr. & Ph. 302 Sapsford v. Fletcher, 4 T. R. 511	•••	•••			, 000,		465
Sanxster r. Foster, Cr. & Ph. 302	•••	•••	•••	•••	•••	•••	246
Sapsford v. Fletcher, 4 T. R. 511	•••	•••	•••	•••	•••	•••	233
Sarson v. Roberts, '95, 2 Q. B. 395	; 65 1	J. J. Q.	. в. 37	; 78 L	. T. 17	74;	
43 W. R. 690 Saunders' Case, 5 Rep. 12 a	•••	•••	•••	•••	•••	•••	356
Saunders' Case, 5 Rep. 12 a	···	•••	•••	•••	•••	211,	212
Saunders v. Merryweather, 3 H. &	C. 902		. J. Ex	. 115;			
814			•••		•••	69,	
Saunders v. Musgrave, 6 B. & C. 52			•••	•••	•••	•••	318
Saunders v. Owen, 2 Salk. 467		•••	•••	•••	•••	•••	126
Saunders v. Pawley, 2 T. L. R. 590		•••	•••	•••	•••	•••	855
Saunders v. Pitfield, 58 L. T. 108		•••			•••	•••	108
Saunderson v. Henson 3 C. & P. 31	14	•••	•••	•••	•••	 230,	
Saundevs n. ()liffe. Mon. 467		•••	•••	•••	•••	200,	137
Saunders v. Wakefield, 4 B. & A. 5 Saunderson v. Hanson, 3 C. & P. 31 Saundeys v. Oliffe, Moo. 467 Sauvage v. Dupuis, 3 Taunt. 410 Savory v. Fufield Local Reard. '9	•••	 C. 218		•••			471
Savery v. Enfield Local Board, '9 L. T. 722; 42 W.R. 33	3, A.	C. 218	; 62 L	J. Ch.	674 :	68	
L. T. 722; 42 W. R. 33	• • •	•••	•••	•••	•••		189
Say v. Barwick, 1 V. & B. 195	•••	•••	•••	•••	•••	6	
Say v. Barwick, 1 V. & B. 195 Say v. Smith, Plowden, 269	•••	•••		•••			
Sayers v. Collyer, 28 Ch. D. 103;	54 L.	J. Ch.	1;51	L. T.	723;	33	
W. R. 91	•••	•••	•••	•••	•••	•••	121

Scales n Lawrence 2 F & F 28	0					336, 33	
Scales v. Lawrence, 2 F. & F. 28 Scaltock v. Harston, 1 C. P. D. 1	06;45	L. J.	C. P. 1	25; 34	L. T. 1	30;	•
24 W. R. 431 Schofield v. Hincks, 58 L. J. Q			<u> </u>	•••		226, 44	4
Schofield v. Hincks, 58 L. J. Q	. в. 1	47; 60) L. T.	573;	· 37 W.	. R.	
School Board for London v. Peter Schwartz v. Locket, 61 L. T. 719 Schwerdtfeger, In the goods of, 1 Scobie v. Scotlers, '95, 1 Q. B. 378 Scotler Scotlers, Eliz 73	 • 18 T	T. R	509	•••	3/5	, 407, 04 ⁴	4 1
Schwartz v. Locket, 61 L. T. 719	; 38 W	7. R. 14	12	•••	•••	39	8
Schwerdtfeger, In the goods of, 1	P. D. 4	124	•••	•••		60	0
Scobie v. Collins, '95, 1 Q. B. 37	5; 64 I	1. J. Q.	B. 10	; 71 L.	T. 775	84, 46	5
Scott a Avery 5 H L C 811	•••	•••	•••	•••	•••	49	4
Scott v. Buckley, 16 L. T. 573	•••	•••	•••	•••	•••	28	4
Scot v. Scot, Cro. Eliz. 73 Scott v. Avery, 5 H. L. C. 811 Scott v. Buckley, 16 L. T. 573 Scott v. Coulson, '03, 1 Ch. 458	3; 2 C	h. 249	; 72 L	. J. C	h. 600	; 88	
L. T. 653; 51 W. R. 394	•••	•••	•••	•••	•••	12	0
Scott v. Daniell, '02, 2 K. B. 351	1 T. T	748	•••	•••	•••	507 56	0
Scott r. Nixon, 2 Con. & L. 185		740	•••	•••	•••	573, 57	4
Scott v. Waithman, 3 Stark. 168	•••	•••	•••	•••	•••	31	ī
Seago r. Deane, 4 Bing. 459					•••	12	9
Seal, Re, '94, 1 Ch. 316; 63 L. J.	. Ch. 2	75 ; 70	L. T.	329 50 T	T '01	13	3
43 I. T 531 · 29 W R 109	ety, 10	Cn. D	. 387;	90 L.	J. Cn.	11;	2
Scott v. Coulson, '03, 1 Ch. 458 L. T. 653; 51 W. R. 394 Scott v. Daniell, '02, 2 K. B. 351 Scott v. Matthew Brown & Co., 5 Scott v. Nixon, 2 Con. & L. 185 Scott v. Waithman, 3 Stark. 168 Seago v. Deane, 4 Bing. 459 Seal, Re, '94, 1 Ch. 316; 63 L. J. Sear v. House Property, &c., Soci 43 L. T. 531; 29 W. R. 192 Searle v. Cooke, 43 Ch. D. 519; Seaton v. Staniland, 4 Giff. 61 Scaward v. Dennington, 44 W. R Seaward v. Drew, 67 L. J. Q. B. Seaward v. Paterson, 12 T. L. R. Sebright's Settled Estate, Re, 33 570; 35 W. R. 49	59 L. J	7. Ch. 2	259 ; 69	2 L. T.	211	37	6
Seaton v. Staniland, 4 Giff. 61	•••	•••	•••	•••	•••	5, 19	2
Scaward v. Dennington, 44 W. R	. 696			•••	•••	49	7
Seaward a Paterson 19 T I R	822; 7	8 L. T.	. 19	•••	•••	478, 48	2
Sebright's Settled Estate. Rc. 33	Ch. D.	 429 : 5	6 L.J.	Ch. 16	9:55	L. T.	2
Sebright's Settled Estate, Re, 33 570; 35 W. R. 49 Seers v. Hind, 1 Ves. 294 Selby v. Browne, 7 Q. B. 620; 1 Selby v. Greaves, L. R. 3 C. P. 5	•••	•••		•••	•••	7	0
Seers v. Hind, 1 Ves. 294		···		•••	•••	420, 42	21
Selby v. Browne, 7 Q. B. 620; 1 Selby v. Greaves, L. R. 3 C. P. 5	4 L. J.	Q. B.	307	E1 . 10	`` .	23	6
16 W. R. 1127	94; 37	L. J. 1	C. P. 2	DI; 18	, Б. Т. 152	100; 219 94	R
Selby v. Selby, 3 Mer. 2		•••	•••	•••		11	Õ
Sells v. Hoare, 1 Bing. 401	•••	•••	•••	•••	•••	28	7
Semayne's Case, 5 Rep. 91	••••	•••	•••	•••	•••	28	3
Seriegut a Nach Field & Co. '0	8 20 K.	B 304	· 79 T	i k	B 630	• 89 • 89	4
Selby v. Greaves, L. R. S.C. P. S. 16 W. R. 1127 Selby v. Selby, 3 Mer. 2 Sells v. Hoare, 1 Bing. 401 Semayne's Case, 5 Rep. 91 Senior v. Armytage, Holt, N. P. Serjeant v. Nash, Field & Co., '0: L. T. 112; 19 T. L. R. 510 Serle, Re, '98, 1 Ch. 652; 67 L.		D. 001	244.	250, 2	53, 313	, 421, 49	9
Serle, Re, '98, 1 Ch. 652; 67 L.	J. Ch.	344; 7	8 L. 1	r. 384	; 46 W	. R.	
440 Servante r. James, 10 B. & C. 41 Seton v. Slade, 7 Ves. 265 Seven v. Mihill, 1 Ld. Ken. 370 Sevenoaks Ry. Co. v. London, Cl.		•••	•••	8	38, 501	, 504, 50	7
Servante r. James, 10 B. & C. 41	0	•••	•••	•••	•••	10	N
Seven v. Mihill, 1 Ld. Ken. 370	•••	•••	•••	•••	•••	26	3
Sevenoaks Ry. Co. v. London, Ch	atham	and D	over R	y. Co.,	11 Ch	. D.	•
625; 48 L. J. Ch. 513; 40 l	. T. 5	15;27	W. R.	672	•••	9	9
625; 48 L. J. Ch. 513; 40 l Sewell v. Angerstein, 18 L. T. 30 Shackell v. Chorlton, '95, 1 Ch. 3	00	, ; , ,	ω. •:		T 'm	51	.7
48 W. R. 894	,,,,	1 11. J.	CII. 36	, , , , ,	ш. т.	82	8
Shadbolt v. Woodfall, 2 Coll. 30 Shannon v. Bradstreet, 1 Sch. & Shardlow v. Cotterell, 20 Ch. D. S	•••	•••	•••	•••	•••	45	0
Shannon v. Bradstreet, 1 Sch. &	Lef. 52	^.			 :	53, 54, 5	5
Shardlow v. Cotterell, 20 Ch. D. S	00;51	L. J. C	h. 353	; 45 L	T. 572	; 30 10	Δ.
W. R. 143 Sharp v. Fowle, 12 Q. B. D. 385	 : 53 L	. i. o.	B. 30	09 : 50	L. T.	10 758 :	70
32 W. R. 539	,				269	299, 30	5
Sharp v. Key, 8 M. & W. 379	•••	•••	•••	•••	•••	´ ´ 44	
Sharp v. Milligan, 22 Beav. 606	- 470	•••	•••	•••	•••		13
Sharp v. Milligan (No. 2), 23 Bes Sharp v. St. Sauveur, 7 Ch. 343	IV. 419	•••	•••	•••	•••	155, 15	96 31
Sharp v. Wright, 28 Beav. 150	•••	•••	•••	•••	•••	21	
Shaw's Trusts, Re, 12 Eq. 124;	25 L. I		19 W.	R. 102			8
Shaw r. Coffin, 14 C. B. N. S. 3	72	•••	•••	•••		169, 49	
Shaw v. Earl of Jersey, 4 C. P. D.			-	-		. 142 24 147, 34	
Shaw v. Kay, 1 Ex. 412; 17 L. J. L.T.	· Lia.		•••	•••	•••		···
11.1.					•	f	

						P.	AGE
Shaw v. Keighron, Ir. R. 3 Eq. 574	ł	•••	•••	•••	•••		573
Shaw v. Lomas, 59 L. T. 477 Shaw v. Shaw, Vern. & Scriv. 607	•••	•••	•••	•••	•••	•••	492
Shaw v. Shaw, Vern. & Scriv. 607	•••	•••	•••	•••	•••	•••	8
Shaw v. Stenton, 2 H. & N. 858;	27 L. J	. Ex. :	253	•••	•••	212,	401
Shawsrigg Fireciay Co. v. Larkhall	Collier	ies, 5	F. 1131		•••	•••	203
Shears v. Thimbleby and Son, 13 T	'. L. R.	451	•••	•••	•••	•••	109
Shecomb v. Hawkins, Cro. Jac. 313 Sheehy v. Muskerry, 1 H. L. C. 57	8	•••	•••	•••	•••	•••	54
Sheehy v. Muskerry, 1 H. L. C. 57	6		···	•••	•••	•••	58
Sheffield Building Society v. Harris	son, 15	Q. B.	D. 858	; 54 L	. J. Q.	В.	
15; 51 L. T. 649; 38 W. R. 1	.44	•••				•••	518
Sheffield Wagon Co. v. Stratton,	48 L.	J. Q. I	B. 35;	40 L.	1.86;	27	
W. R. 120	***			•••	•••	3,	458
Shephard v. Barber, 67 J. P. 238;	11.0	T (CL	91		m 47.	•••	392
Shepheard v. Walker, 20 Eq. 659;	44 L.	J. Ch	. 025 ;	99 Tr.	1. 4/;	23	117
W. R. 903 Shepherd v. Berger, '91, 1 Q. B.	507 .	#0 T	;" ₀ 1	905	 	T	117
485; 39 W. R. 330	587 ;	00 11.	J. Q. 1). 08U ;	04 17		174
Shepherd v. Hodsman, 18 Q. B. 31	R . 91	r) 'R 24	9	•••	•••	2
Shennard v. Hongkone &c. Bank	ing Cor	norati	m 20 T	W HL	159	•••	424
Sherrard v. Gascoigne, '00, 2 O. B.	279 :	69 T.	J Q B	720	82 T.	T.	
Sheppard v. Hongkong, &c., Bank Sherrard v. Gascoigne, '00, 2 Q. B. 850; 48 W. R. 557; 16 T. L.	R. 482			. , 20 ,			410
Shields v. Atkins, 8 Atk. 560		•••	•••	•••	•••	•••	90
GL:11:L Y OT W & /1 /	79				•••		112
Shillson, Ex parte, 20 Q. B. D. 343 36 W. R. 187	: 57 I	. J. Q	B. 16	9: 58 1	. T. 5	86:	
36 W. R. 187	•••		•••	•••	•••	•••	459
Shippey v. Derrison, 5 Esp. 190	•••	•••	•••	•••	•••		107
Shipwick v. Blanchard, 6 T. R. 29	8	•••	•••	•••	•••	•••	313
Shirley v. Newman, 1 Esp. 266	•••	•••	•••	•••	•••	466,	480
Shopland v. Ryoler, Cro. Jac. 55	•••	•••	•••	•••	•••		413
Shore v. Wilson, 9 C. & F. 365	•••	•••	•••	•••	•••	•••	128
Shrewsbury's (Countess of) Case 5	Rep. 13	3 b	•••	•••	•••	351,	352
Shrewsbury (Earl of) v. Garfield, 6	0 L. J.	Q. B.	765; 6	5 L. T.	. 748	•••	578
Shrewsbury (Earl of) v. Gould, 2 B Shrubb v. Lee, 59 L. T. 376	. & A.	487	•••	•••	•••	•••	153
Shrubb v. Lee, 59 L. T. 376	•••	•••	•••	•••	•••	544,	
Shuttleworth, Ex parte, 1 D. & C. Sidebotham v. Holland, '95, 1 Q. I	228		·"		***		323
Sidebotham v. Holland, '95, 1 Q. 1	3. 878 ;	64 L.	J. Q.	B. 200	; 72 L.	T.	400
62; 43 W. R. 228	•••	. • • • • · · ·	1	140, 40	9, 470,	472,	408
Silcock v. Farmer, 46 L. T. 404	7 0%	n 150	KO T	OF		***	420
Silkstone and Dodworth Co., Re, 1	ı, Çıı.	D. 196	; 50 L	. J. CI	. 444;	997	202
L. T. 405; 29 W. R. 484 Simkin v. Ashurst, 1 Cr. M. & R.	981 · A	Tur 1	781		•••	041,	, 92
Simmonds v. Heath, '94, 1 Q. B.	201, 1	LIL) R 91	4 · 80	г. т в.	41 •	, 02
42 W. R. 112			v. D. 21			,	233
Simmons v. Norton, 7 Bing. 640		•••		•••	349,	850.	
Simmons v. Underwood, 76 L. T.	777	•••	•••	•••			471
Simons v. Farren, 1 Bing, N. C. 1	26, 279	2	•••	•••	•••	238,	
Simons v. Farren, 1 Bing. N. C. 1 Simpson v. Clayton, 4 Bing. N. C.	758 : 2	Jur.	892	•••	•••		
Simpson v. Gutteridge, 1 Madd. 60	09	•••	•••	•••	•••	•••	61
Simpson v. Hartopp, Willes, 512 Simpson v. Scottish Union Insuran	•••	•••	•••	25	7, 258,	260,	261
Simpson v. Scottish Union Insuran	ace Co.	, 1 He	m. & 1	M. 618	; 32 L	. J. ´	
Ch. 329	•••	•••	•••	•••	•••	•••	382
Simpson v. Titterell, Cro. Eliz. 24	2	•••	•••	•••	•••	•••	495
Sims r. Tuffs, 6 C. & P. 207	•••	•••	•••	•••	•••		806
Six Carpenters' Case, 8 Rep. 146 a	• • • •	•••	•••	•••	•••	•••	298
Skeate v. Beale, 11 A. & E. 983	•••	•••	•••	•••	•••	•••	289
Skerry v. Preston, 2 Chit. 245	•••	•••	•••	•••	•••	242,	
Skidmore v. Booth, 6 C. & P. 777	•••	•••	•••	•••	•••	•••	281
Skinner, Ex parte, 2 Mer. 457 Skinner v. Hunt, '04, 2 K. B. 452	***	···	 D	, ··· _^	· · ·	•••	38
okinner v. Hunt, '04, 2 K. B. 452	; /ð I	.J.K	D 170	υ; 90 Ι	⊔. 1. 4 :	ō₩;	
91 <i>Ibid</i> . 270; 68 J. P. 173, 4	02; 20	1. L.	n. 1/6,	, 555 ;	ж ш. С і.		900
769 Skinners' Co. v. Knight, '91, 2 Q.	B 540		T o	T 400	. RK T	231,	OBA
240; 40 W. R. 57	D. 042	, 00 1	⊿. v. ų .		•		508
Skinworth v. Green, 8 Mod. 311	•••	•••	•••	•••	•••	•••	227

•						Ð	AGE
Skull v. Glenister, 16 C. B. N. S. 368						R.	
Slack v. Crewe, 2 F. & F. 59	•••	•••	•••	•••	•••		
Slack n Sharne S A & R SRR . 7	T. T O	1 R 99	K . 9	Tur 220			940
Slater v. Stone, Cro. Jac. 645 Slator v. Brady, 14 Ir. C. L. R. 61 Slator v. Trimble, 14 Ir. C. L. R. 8 Sleap v. Newman, 12 C. B. N. S. 1 Slingsby's Case, 5 Rep. 18 a Slipper v. Tottenham, &c., Ry. Co. L. T. 446: 15 W. R. 861	•••	•••	•••	•••	•••	•••	342
Slator v. Brady, 14 Ir. C. L. R. 61	•••	•••	•••	•••	•••	6,	7, 8
Slator v. Trimble, 14 Ir. C. L. R. &	542 10	•••	•••	•••	•••	6,	7, 8
Slingshy's Case 5 Rep. 12 c.	10	•••	•••	•••	•••	•••	180
Slipper v. Tottenham. &c., Rv. Co.	4 Ka	112 •	36 I	. I. Cl	. 841 •	18	100
L. T. 446; 15 W. R. 861 Sloper v. Saunders, 29 L. J. Ex. 27 Smallman v. Agborow, Cro. Jac. 4	·,						421
Sloper v. Saunders, 29 L. J. Ex. 27	5		•••	•••	•••	•••	830
Smallman v. Agborow, Cro. Jac. 4:	17	•••	•••	•••	•••	•••	19
Smallman v. Pollard, 6 M. & Gr. 1	001;1	13 L.J.	. C. P.	116;	8 Jur.	246	319
Smallwood v. Sheppards, '95, 2 Q.	B. 627	; 64 L	. J. Q.	В. 727	; 78 L	Τ.	990
219; 44 W. R. 44	91 T. J	P	7-8	•••	•••	106,	426:
219; 44 W. R. 44 Smart v. Harding, 15 C. B. 652; Smart v. Jones, 15 C. B. N. S. 717	7: 33	i j c	. P. 1	54 : 10	Jur. N	. S.	
678 : 10 L. T. 271 : 12 W. R.	430					88.	404
Smart v. Morton, 5 E. & B. 30	•••	•••	•••	•••			144
678; 10 L. T. 271; 12 W. R. Smart v. Morton, 5 E. & B. 30 Smith. Re, 25 Q. B. D. 536; 59	L. J.	Q. B.	554;	63 L.	Г. 621 ;	38	
Smith. Re, 25 Q. B. D. 536; 59 W. R. 744 Smith's Charity, Re, 26 Sol. Journ Smith's Estate, Re, 35 Ch. D. 589 Smith v. Acock, 53 L. T. 230 Smith v. Ashforth, 29 L. J. Ex. 28 Smith v. Barrett, 1 Sid. 161 Smith v. Birmingham Gas Co. 1 A Smith v. Blackmore, 1 T. L. R. 20 Smith v. Bowin, 1 Mod. 25 Smith v. Bowin, 1 Mod. 25 Smith v. Bowles, 2 Rol. Abr. 451 Smith v. Callander, '01, A. C. 297	•••	•••	•••	•••	•••	•••	460
Smith's Charity, Re, 26 Sol. Journ	. 298	•••	•••	•••	•••	•••	37
Smith a Acock 58 L. T 980	••• .	•••	•••	•••	•••	•••	18.
Smith v. Ashforth, 29 L. J. Ex. 24	9	•••	•••	•••	•••	288.	291
Smith v. Barrett, 1 Sid. 161		•••	•••	•••	•••	20 0,	21
Smith v. Birmingham Gas Co. 1 A	. & E.	526	•••	•••	•••	•••	281
Smith v. Blackmore, 1 T. L. R. 20	87	•••	•••	•••	•••	•••	488
Smith v. Bowin, 1 Mod. 25	•••	•••	•••	•••	•••	•••	8
Smith v. Bowles, 2 Kol. Abr. 451		. "; n			m	•••	218
Smith v. Callander, '01, A. C. 297	; 70 1	L. J. P.	U. 52	5; 84 L	. 1. 80	٠	970
Smith v. Clark 9 Dowl 202	•••	•••	•••	•••	•••	•••	477
Smith v. Clegg. 27 L. J. Ex. 300	•••	•••	•••	•••	•••	•••	188
Smith v. Compton, 3 B. & Ad. 18	9	•••	•••	•••	•••	•••	400·
Smith v. Day, 2 M. & W. 684	•••	•••	•••	•••	190,	191,	250 ·
Smith v. Chance, 2 B. & A. 753 Smith v. Clark, 9 Dowl. 202 Smith v. Clegg, 27 L. J. Ex. 300 Smith v. Compton, 3 B. & Ad. 18 Smith v. Day, 2 M. & W. 684 Smith v. Eggington, L. R. 9 C. P.	. 145;	43 L. J	J. C. 1	P. 140 ;	80 L.	T.	
521	•••	•••	•••	•••	•••	68,	446
Smith a Francht 69 I I O D 9	 oo . <i>a</i> c	T	704	•••	•••	900	830·
Smith a Goodwin A R & Ad A19	2U; 01	, ц. 1.	124	•••	•••	988	208
Smith v. Grownow, '91, 2 Q. B. 89	94 : 60	L. J. C	о. :: Э. ::В. :2	76: 65	L.T. 1	17 :	200
40 W. R. 46	•••	•••	•••	•••	•••	•••	172
Smith and Hartogs, Re, 78 L. T 2	21;44	1 W. R.	79	•••	•••	•••	325 ·
Smith v. Henley, 1 Ph. 891	·	•••	•••	•••	•••	•••	128
Smith v. Howell, 6 Kx. 780; 20 I	4. J. E	x. 877	•••	•••	•••		443
Smith a Hunt 54 T. T 499	,	•••	•••	•••	•••	231,	∂00 41∩
40 W. R. 46 Smith and Hartogs, Re, 78 L. T 2 Smith v. Henley, 1 Ph. 391 Smith v. Howell, 6 Rx. 730; 20 I Smith v. Humble, 15 C. B. 321 Smith v. Hunt, 54 L. T. 422 Smith (or Coles) v. Lovell, 10 C. I Smith v. Low, 1 Atk. 489	3. 6 : 2	0 L. J.	C. P.	87 : 15	 Jur. 2	50	492:
Smith v. Low. 1 Atk. 489				•••		7. 74	. 75
Smith v. MacInre, 32 W. R. 459	•••	•••	•••	•••	•••	•••	521
Smith v. Malings, Cro. Jac. 160	•••	•••	•••	•••	•••	•••	289
Smith v. Mapleback, 1 T. R. 441	•••	··· _	•••	2	20, 415,	485,	491
Smith v. Low, 1 Atk. 489 Smith v. MacInre, 32 W. R. 459 Smith v. Malings, Cro. Jac. 160 Smith v. Mapleback, 1 T. R. 441 Smith v. Marrable, 11 M. & W. 5 Smith v. Martin, 2 Wms. Saund.	; 12 L	. J. Ex	. 223	; 7 Jur.	. 70	•••	856
Smith v. Martin, 2 Wms. Saund.	100, (e	a. 18/1) 806	•••	•••	•••	199
Smith v. Mills, 16 T. L. R. 59 Smith v. Morris, 2 Bro. C. C. 311	•••	•••	•••	•••	•••	•••	340 205
Smith v. Peat, 9 Ex. 161; 23 L.		84	•••	•••	846	442,	
Smith v. Porklington, 1 Cr. & J.		•••	•••	•••	•••		69
Smith v. Raleigh, 3 Camp. 513	•••	•••	•••	•••	•••	•••	237
Smith v. Render, 27 L. J. Ex. 83	; 5 W	. R. 87	5	•••	•••	•••	515
Smith v. Ridgway, L. R. 1 Ex. 38	31	•••	•••	•••	•••	•••	136
Smith v. Roberts, 9 T. L. R. 77	•••	•••	•••	•••		•••	488
					f 2	i	

·						_	
Smith v. Robinson, '93, 2 Q. B. 5 41 W. R. 588	3;62	L. J. Q		9; 69	L. T. 4		4GE 395
Smith a Russell & Tount 400	•••			•••	•••	262,	
Smith v. Ryan, 9 Ir. L. R. 285 Smith v. St. Michael, Cambridge, Smith v. Seghill, L. R. 10 Q. B. 4	3 E. &	E. 38	3				85
859; 23 W. R. 745	22;4	4 L. J. 	м. (). 114; 	32 L.	T. 88	, 91
Smith v. Torr, 8 F. & F. 505	•••	•••	•••	•••	•••	286,	294
	•••	•••	•••	•••	•••	•••	330 128
Smith v. Walton, 8 Bing. 235 Smith v. Webster, 3 Ch. D. 49; W. R. 894	45 L.	J. Ch.	528;	35 L.	T. 44	24	110
Smith v. White, L. R. 1 Eq. 626	; 35 I	L. J. C	h. 454	1; 14]			
14 W. R. 510 Smith v. Widlake, 3 C. P. D. 10;	47 L.	J. Ch.	282;	26 W.	R. 52	, 354, 49	
Smith v. Wilson, 3 B. & Ad. 728 Smith r. Wright, 6 H. & N. 821; Smyth v. Carter, 18 Beav. 78 Smyth v. Nangle, 7 Cl. & F. 405 Snelgar v. Henston, Cro. Jac. 615				•••	•••	•••	128
Smith r. Wright, 6 H. & N. 821; Smyth v. Carter, 18 Beav. 78	20 17	J. EX.	313	•••	•••	•••	293 351
Smyth v. Nangle, 7 Cl. & F. 405	•••	•••	•••	•••	•••	•••	167 250
						 S.	201
333; 7 L. T. 747; 11 W. R. Snell v. Snell, 4 B. & C. 741	341	•••	•••	•••	•••	•••	25
Snow v. Boycott, '92, 3 Ch. 110;	61 L.	J. Ch.	591;6	35 L. 7	Ր. 762 ։		
W. R. 603 Soames v. Nicholson, '02, 1 K. B.	 . 157 :	71 L.	J. K.	B. 24	 81 L	יני	48
614 ; 50 W. R. 169	•••	•••	•••	•••	•••	•••	46
Somerset (Duke of) v. Fogwell, 5 F	3. & C.	875	•••	•••	•••	 2.	13
Sorsbie v. Park, 12 M. & W. 146	; 13 L.	J. Ex.	9	•••			16
614; 50 W. R. 169 Solme v. Bullock, 3 Lev. 165 Somerset (Duke of) v. Fogwell, 5 F Sorsbie v. Park, 12 M. & W. 146 Soulsby v. Neving, 9 East, 310 Souter v. Drake, 5 B. & Ad. 992 South Konsington Co. on Stores	•••	•••	•••	•••			42
South Renamigion Co-op. Stores, A	166, 27	OII. D.	TOT '	оо д. 9	. O 3	120.	
44 L. T. 471; 29 W. R. 662 Southall v. Leadbetter, 3 T. R. 48	58	•••	•••	•••			38
Southampton Imperial Hotel Co., Southcote v. Hoare, 3 Taunt. 87	Re, H	unt's C	laim, 2	20 W. I	₹. 435	•••	3 16
Southport Banking Co. v. Thomp 58 L. T. 143; 36 W. R. 113	son, 37	Ch. D	. 64;	57 L	J. Ch. 1	14;	
Southport Tramways Co. v. Gandy	7. '97.	2 0.	H RK	. KR 1.	1 1	В.	52
532; 76 L. T. 815; 45 W. R Southwell v. Scotter, 49 L. J. Q. 1 Soward v. Leggatt, 7 C. & P. 618	684	•••			•••	•••	57
Southwell v. Scotter, 49 L. J. Q. I Soward v. Leggatt, 7 C. & P. 613	B. 356	•••	•••	•••	•••	486,	
Sparkes v. Smith, 2 vern. 2/5	•••	•••	•••	•••	•••	•••	43
Sparrow's Estate, Re, 1892, 1 Ch. Sparrow v. Cooper, Hay & J. 404	412	•••	•••	•••	•••	•••	16
Sparrow v. Cooper, Hay & J. 404 Sparrow v. Hawkes, 2 Esp. 505	•••			406, 4	 DE 494	497	48
Spencer's Case, 5 Rep. 16 a Spencer v. Bailey, 69 L. T. 179	•••	•••		,	•••	•••	43
Spencer v. Marriott, 1 B. & C. 45	7 	•••	•••	•••	402	, 404, 	41 39
Spenser's Estates, Re, 37 L. J. Ch	. 18	•••	•••	•••	•••	•••	90
Spice v. Webb, 2 Jur. 943 Spicer v. Barnard, 28 L. J. M. C.	•••	•••	•••	•••	•••	•••	28 40
Spicer v. Martin, 14 App. Cas. 12	; 58 L	J. Ch	. 309 ;	60 L.	T. 546	; 37	
W. R. 689 Spike v. Harding, 7 Ch. D. 871;	47 L.	J. Ch.	323 : 3	38 L. '	T. 285	 : 26	43
W. R. 420	•••		•••	•••		•••	37
Spragg v. Hammond, 2 Br. & B. Spurling v. Bantoft, '91, 2 Q. B.	อษ 884:6				 : 65 L	. T.	23
584 : 40 W. R. 157	•••	•••		•••	•••	•••	40
Squier v. Mayer, 2 Eq. Cas. Abr. Stacey r. Hill, '01, 1 K. B. 660;	43U 69 L.	J. Q. E	 3. 796	; 70 L	. j. K	. в.	52
435; 84 L. T. 410; 49 W. F	L. 39 0 ;	7 Mar	ıs. 399	; 8 Ibi	d. 169	•••	45

							_	
Stafford v. Gardner. L. K. 7	C. P. 24	2 . 2	5 L. T.	876 •	20 W.	R 299		AGE. 536
Stagy v. Wyatt, 1 Arn. 327 Staines v. Morris, 1 V. & B. Stancliffe v. Clarke, 7 Ex. 4 Standen v. Christmas 10 Q.	: 2 Jur.	892					•••	466
Staines v. Morris, 1 V. & B.	8				•••	441,	442,	443
Stancliffe v. Clarke, 7 Ex. 4	89 ; 21 I	L. J.	Ex. 129). <u></u>	···	•••	•••	365
Standen v. Christmas 10 Q.	В. 135;	16]	L. J. Q.	В. 26	5; 11 J	ur. 694	l :	333,
Staniforth a For 7 Bing 5	٥٥						433,	440
Stanhone v. Haworth, 3 'l'.	L. R. 84	•	•••	•••	•••	•••	•••	510
Stanley v. Agnew, 12 M. &	W. 827;	13 I	J. Ex	. 197		•••	•••	844
Staniforth v. Fox. 7 Bing. 5 Stanhope v. Haworth, 3 T. Stanley v. Agnew, 12 M. & Stanley v. Dowdeswell, L. R Stanley v. Hayes, 3 Q. B. 10 Stanley v. Towgood, 3 Bing Stanley v. Wharton, 9 Price Stanfeld v. Hellawell, 7 Ex. Stansfield v. Hobson, 3 D. 1	. 10 C. I	P. 10	2;28 \	V. R. 3	389	•••	•••	103
Stanley v. Hayes, 3 Q. B. 10	5; 11 L	. J. (Q. B. 17	76	•••	•••	•••	402
Stanley v. Towgood, 3 Bing	. N. C. 4	∧ TD:		•••	•••	•••:		336
Stanfald a Hallawell 7 Fr	, 0UL; 1 979 · 91	U PRI	CB, 138 [Tru 1	48	•••	•••	272,	2/3-
Stansfield v. Hobson, 3 D. M.	1. & G. 6	20	. EX. 1	. 10	•••	•••	•••	574
Stansfield v. Mayor of Ports	mouth, 4	Č. 1	3. N. S.	120 :	27 L.	j. c.	P.	•••
124 : 4 Jur. N. S. 440								528
Stanton v. Brown, '00, 1 Q. 64 J. P. 326; 16 T. L.	B. 671;	69 I	J. Q.	B. 301	; 48 W	'. R. 38	3;	
64 J. P. 326; 16 T. L.	K. 157			 D r				410
Stapylton v. Clough, 2 E. &	D. 988;	. 23 J	⊿.J.Ų. 7 Je T	. D. D ;	18 Jur	. 60		479 167
Statham v. Liverpool Docks Staunton v. Powell, Ir. R. 1	C. I. 19	32			•••	•••	•••	384
								OFR
Stedman v. Bates, 1 Salk. 3 Steed v. Cragh, 9 Mod. 43 Steele v. Mart, 4 B. & C. 27 Steele v. Midland Ry. Co., 1 Steer v. Cowley, 14 C. B. N Steevens' Hospital v. Dyas, Steiglitz v. Egginton, Holt,	90	•	•••	•••	•••	•••	255,	256
Steed v. Cragh, 9 Mod. 43	•••	••	•••	•••	•••	•••	•••	20
Steele v. Mart, 4 B. & C. 27	2		•••	•••	•••	•••	181,	147
Steele v. Midiand Ky. Co., I	Ch. 278)	•••	•••	•••	•••	•••	179
Steevens' Hospital v. Dvas	o. oo: 15 Ir Cl	. Re	n 405	•••	•••	•••	•••	22
Steiglitz r. Egginton, Holt,	N. P. 14	1					•••	70
Stein v. rope, uz, i k. D.	080 ; II	ப. ச.	r. D.	022; C	ю 1. 1.	. Zoo;	ຍບ	
W. R. 374; 9 Mans. 19 Stephens, Ex parte, 7 Ch.	25			•••		•••	455,	456
Stephens, Ex parte, 7 Ch.	D. 127;	47 1	L. J. Bk	. 22;	87 L. T	. 613 ;	26	4 × 10.
W. R. 136 Stephens v. Bridges, 6 Mado Stephens v. Hotham, 1 K. & Stevens v. Copp, L. R. 4 E	 1 AA	••	•••	•••	•••	•••	•••	40/
Stephens v. Hotham 1 K. A	1. 00 7. J. 571 :	24 1	ւլ. Եր	885	•••	121.	452	453
Stevens v. Copp. L. R. 4 E	x. 20 : 8	8 L.	J. Ex.	31: 1:	9 L. T.	454:	17	
Stevens v. Marston, 60 L. J.	Q. B. 19	92;6	84 L. T.	274;	30 W.			
Stevens v. Morson, 26 Sol. J	ourn. 25	•	•••	•••		•••		129
Stevenson r. Lambard, 2 Ea	st, 575		 . T T (288	, 240,	431,	430-
Stevenson a Powell 1 Rules	U. D. 200 ir 182); 22	а 1	J. P. 1	10	•••	•••	402
Stevenson v. Wood, 5 Esp.	200	• • • •	•••	•••	•••	•••	•••	324
Stevinson's Case, 1 Leon. 32	24 .	••	•••		•••	•••	•••	153
Stevens v. Marston, 60 L. J. Stevens v. Morson, 26 Sol. 3 Stevenson v. Lambard, 2 Ea Stevenson v. Newnham, 13 Stevenson v. Powell, 1 Bulse Stevenson v. Wood, 5 Esp. Stevinson's Case, 1 Leon. 3 Stiles v. Cowper, 3 Atk. 69 Still v. Webb, 45 W. R. 17 Stockdale v. Ascherherg, 70 K. B. 492; 73 Ibid. 20 68 Ibid. 241; 1 L. G. R	2	••	•••	•••	•••	4	1, 49	, 55
Still v. Webb, 45 W. R. 170	0				D		•••	190
Stockdale v. Ascherherg, '03	3, 1 K. J	3.87 Tr. 7/	3; U1,	l K.	B. 447 ;	72 L	J.	
68 <i>lbid</i> . 241; 1 L. G. R	. 548 · 10	ነ ተ	01 , 52 L R 41	17 · D.	13; 0/ T. T. F	u. F. 4. L 285	.392	394
Stocker v. Planet Building	Society.	27 W	. R. 87	7				346
Stockton Iron Furnace Co.	, Re, 10	Ch.	D. 335	; 48 I	. J. Ch			
L. T. 19; 27 W. R. 483	3	•••	•••	•••	•••	′	88	3, 84
Stokell v. Niven, 61 L. T. 1	8	••	•••	•••	•••	•••	•••	108
Stokes v. Moore, 1 Cox, 21	у тор	 000 -	 KA T '	 P 70r	•••	•••	•••	110
Stone v. Evane Packa Add	∪. დ. D. . Cau 04	440;	04 L.	T. 180	•••	•••	•••	432
Stone v. Whiting. 2 Stark.	235		•••	•••	•••	•••	•••	490
Storer v. Hunter, 3 B. & C.	368	••	•••	•••	•••	•••	•••	531
Storey v. Robinson, 6 T. R.	138	••_	•••	•••	•••	•••	•••	261
Story v. Finnis, 6 Ex. 123;	20 L. J.	Ex.	144	•••	•••	•••	•••	294
Stockton Iron Furnace Co. L. T. 19; 27 W. R. 43: Stokell v. Niven, 61 L. T. 1 Stokes v. Moore, 1 Cox, 21 Stolworthy v. Powell, 55 L. Stone v. Evans, Peake, Add Stone v. Whiting, 2 Stark. Storer v. Hunter, 3 B. & C. Storey v. Robinson, 6 T. R. Story v. Finnis, 6 Ex. 123; Story v. Johnson, 2 Y. & C. Strangways, Re, 34 Ch. D. W. R. 83	Ex. 586	e T	T C1	105.	 55 T T	714	25	7
W R 82	425; D	0 L.	J. Un.	190;	υυ Ц. 1	. /14;	- 00	47
	•••	••	•••	•••	•••	•••	•••	

							r	AGE
Stranks v. St. John, L. R. 283; 15 W. R. 678		•			_		T.	113
Strathmore (Earl of) v. Ve L. T. 309; 36 W. R. 3	ane, 37	Ch. D	. 128;	57 L.	J. Ch	. 455;	58	453
Stratton v. Pettitt, 16 C. B.	. 420;	24 L. J	. C. P.	182;	1 Jur.	N. S. 6	62	130
Strelley v. Pearson, 15 Ch. W. R. 752	•••	•••	•••	•••	•••	154,	204,	
Strickland v. Maxwell, 2 Co Strong v. Elliott, 12 Sol. Jo	ourn. 65	51	•••	•••	•••	•••	281,	297
Strong v. Stringer, 61 L. T Stroud, Re, 8 C. B. 502; 10	. 470 8 L. J. (C. P. 1	 17	•••	•••	•••	501, 93.	508 128
Stuart v. Diplock, 43 Ch. I W. R. 223	D. 343;	59 L.	J. Ch.	142;	62 L. I	r. 83 3 ;	38	358
Stuart v. Joy, '04, 1 K. E	362;	73 L.	J. K. 1	B. 97;		T. 78;	20	
T. L. R. 109 Stubbs v. Parsons, 3 B. & A	A. 519	•••				•••	•••	446 230
Stukeley v. Butler, Hob. 17 Sturgeon v. Wingfield, 15				 J. Ex.		•••	•••	145 74
Sturgess v. Farrington, 4 To Styles v. Wardle, 4 B. & C.	aunt. 6	14	•••		•••	•••	•••	233 146
Sucksmith v. Wilson, 4 F. Suffield and Watts, Re, 20	& F. 10	88	•••	•••	•••	•••	•••	536
	-				-	,	245,	
Sullivan v. Bishop, 2 C. & Sumner v. Bromilow, 34 L.	J. Q. E	3. 130 ;	 11 Jw			•••		
Sumpter v. Cooper, 2 B. & 2 Sunderland v. Newton, 3 S.			•••		•••	•••		_
Surcome v. Pinniger, 3 D. 3 Surplice v. Farnsworth, 7 L	M. & G. 1. & Gr	571 576:	 13 L. J	 J. C. P	 . 215 :	 8 Jur. '	 760	112
Surtees v. Woodhouse, '03,							236,	481
	T 77. 7							
407; 51 W. R. 275; (87 J. P	. 232;	1 L. (3. R. 2	22 7 ·; 18	3 T. L.	R.	00.0
222; 19 <i>Ibid</i> . 221 Sury v. Brown, Latch. 99	87 J. P 	. 232 ;	1 L. (G. R. 2	227·; 18 	393, 	R. 895, 2,	125
222; 19 Ibid. 221	87 J. P 5	. 232 ;	1 L. (G. R. 2	227·; 18 	3 T. L. 393, 	R. 895, 2,	125 54
222; 19 Ibid. 221 Sury v. Brown, Latch. 99 Sussex v. Wroth, Cro. Eliz. Sutcliffe v. Wardle, 63 L. T Sutherland v. Briggs, 1 Ha	5 5 2. 329 re, 26	232 ;	1 L. (G. R. 2	227·; 18 	393, 	R. 895, 2, 	125 54
222; 19 Ibid. 221 Sury v. Brown, Latch. 99 Sussex v. Wroth, Cro. Eliz. Sutcliffe v. Wardle, 63 L. T Sutherland v. Briggs, 1 Ha Sutherland (Duke of) v. H 66 L. T. 210	5 3. 329 re, 26 leathco	. 232 ; te, '92,	1 L. (1 Ch.	G. R. 2	227-; 18 81 L. J. 86, 14	3 T. L. 393, 5, 192,	R. 895, 2, 48; 218,	125 54 165 112
222; 19 Ibid. 221 Sury v. Brown, Latch. 99 Sussex v. Wroth, Cro. Eliz. Sutcliffe v. Wardle, 63 L. T Sutherland v. Briggs, 1 Ha Sutherland (Duke of) v. H 66 L. T. 210 Sutherland v. Sutherland, 1	5 J. P 5 329 re, 26 leathco	te, '92,	1 L. (1 Ch. 9; 62	G. R. 2	227-; 18 81 L. J. 86, 144	393, 5, 192, ; 69 L.	R. 895, 2, 48; 218, T.	125 54 165 112 215
222; 19 Ibid. 221 Sury v. Brown, Latch. 99 Sussex v. Wroth, Cro. Eliz. Sutcliffe v. Wardle, 63 L. T. Sutherland v. Briggs, 1 Ha Sutherland (Duke of) v. H 66 L. T. 210 Sutherland v. Sutherland, 1 186; 42 W. R. 12 Sutton, Re, 32 L. J. Ch. 435 413	5 J. P 5 329 re, 26 leathco	te, '92, Ch. 16	1 L. (1 Ch. 9; 62	475; 6 L. J. C	227-; 18	3 T. L. 393, 5, 192, ; 69 L. 4	R. 895, 2, 48; 218, T. 1, 42 R.	125 54 165 112 215 4, 43 245
Sury v. Brown, Latch. 99 Sussex v. Wroth, Cro. Eliz. Sutcliffe v. Wardle, 63 L. T. Sutherland v. Briggs, 1 Ha Sutherland (Duke of) v. H 66 L. T. 210 Sutherland v. Sutherland, 1 186; 42 W. R. 12 Sutton, Re, 32 L. J. Ch. 435 413 Sutton's Case, 12 Mod. 557 Sutton v. Baillie, 65 L. T.	57 J. P 5 2. 329 re, 26 leathco 7; 9 Ju	te, '92, Ch. 16	1 L. (1 Ch. 9; 62	475; C	227-; 18 81 L. J. 86, 149 8h. 946	3 T. L. 393, 2 5, 192, ; 69 L. 4 11 W.	R. 895, 2, 48; 218, T. 1, 42 R.	125 54 165 112 215 43 245 49 405
222; 19 Ibid. 221 Sury v. Brown, Latch. 99 Sussex v. Wroth, Cro. Eliz. Sutcliffe v. Wardle, 63 L. T Sutherland v. Briggs, 1 Ha Sutherland (Duke of) v. H 66 L. T. 210 Sutherland v. Sutherland, 1 186; 42 W. R. 12 Sutton, Re, 32 L. J. Ch. 435 413 Sutton's Case, 12 Mod. 557	5 J. P 5 329 re, 26 leathco 1893, 3 7; 9 Ju 528 W. 52	te, '92, Ch. 16	1 L. (1 Ch. 9; 62 3. 456;	3. R. 2 475; 6 L. J. 6	227-; 18 81 L. J. 86, 149 8h. 946	3 T. L. 393, 	R. 895, 2, 48; 218, T. 1, 42 R. 	125 54 165 112 215 43 245 49 405
Sury v. Brown, Latch. 99 Sussex v. Wroth, Cro. Eliz. Sutcliffe v. Wardle, 63 L. T. Sutherland v. Briggs, 1 Ha Sutherland (Duke of) v. H. 66 L. T. 210 Sutherland v. Sutherland, 1 186; 42 W. R. 12 Sutton, Re, 32 L. J. Ch. 435 413 Sutton v. Baillie, 65 L. T. Sutton v. Temple, 12 M. &	57 J. P 5 1. 329 re, 26 leathco 1893, 3 7; 9 Ju 528 W. 52 	te, '92, Ch. 16	1 L. (1 Ch. 9; 62 3. 456; J. Ex.	3. R. 2 475; 6 L. J. 6	227-; 18 81 L. J. 86, 149 %h. 946 Jur. 10	3 T. L. 393, 5, 192, 5, 69 L. 4 11 W.	R. 895, 2, 48; 218, T. 1, 42 R 235,	125 54 165 112 215 , 43 245 49 405 356 125
Sury v. Brown, Latch. 99 Sussex v. Wroth, Cro. Eliz. Sutcliffe v. Wardle, 63 L. T. Sutherland v. Briggs, 1 Ha Sutherland (Duke of) v. H. 66 L. T. 210 Sutherland v. Sutherland, 1 186; 42 W. R. 12 Sutton, Re, 32 L. J. Ch. 43; 413 Sutton's Case, 12 Mod. 557 Sutton v. Baillie, 65 L. T. Sutton v. Temple, 12 M. & Swadling v. Piers, Cro. Jac. Swain v. Ayres, 21 Q. B. I. Swaine v. Holman, Hob. 20	5 J. P 5 329 re, 26 leathco 1893, 3 7; 9 Ju 528 W. 52 613 D. 289;	te, '92, Ch. 16 ; 13 L	1 L. (1 Ch. 9; 62 3. 456; J. Ex. J. Q. I	3. R. 2 475; (L. J. C 8 L. 7 17; 7	227-; 18 81 L. J. 86, 149 8h. 946 Jur. 10	3 T. L. 393,	R. 895, 2, 48; 218, T. 1, 42 R 235, 8	125 54 165 112 215 43 245 49 405 356 125 508 20
Sury v. Brown, Latch. 99 Sussex v. Wroth, Cro. Eliz. Sutcliffe v. Wardle, 63 L. T. Sutherland v. Briggs, 1 Ha Sutherland (Duke of) v. H. 66 L. T. 210 Sutherland v. Sutherland, 1 186; 42 W. R. 12 Sutton, Re, 32 L. J. Ch. 43; 413 Sutton's Case, 12 Mod. 557 Sutton v. Baillie, 65 L. T. Sutton v. Temple, 12 M. & Swadling v. Piers, Cro. Jac. Swain v. Ayres, 21 Q. B. I Swaine v. Holman, Hob. 20 Swann v. Falmouth, 8 B. & Swansea Bank v. Thomas,	57 J. P 58 J. 329 re, 26 leathco 1893, 3 7; 9 Ju 528 W. 52 613 D. 289; 4 C. 436 4 Ex.	te, '92, Ch. 16 Tr. N. S Tr. 13 L. Tr. 12 L.	1 L. (1 Ch. 9; 62 3. 456; J. Ex. J. Q. J	3. R. 2 475; (L. J. 0 8 L. 7 17; 7 B. 428;	227-; 18 81 L. J. 86, 149 2h. 946 Jur. 10 36 W.	3 T. L. 393,	R. 895, 2, 48; 218, T. 42 R 235, 81, 286, T.	125 54 165 112 215 , 43 245 49 405 356 125 508 20 293
Sury v. Brown, Latch. 99 Sussex v. Wroth, Cro. Eliz. Sutcliffe v. Wardle, 63 L. T. Sutherland v. Briggs, 1 Ha Sutherland (Duke of) v. H. 66 L. T. 210 Sutherland v. Sutherland, 1 186; 42 W. R. 12 Sutton, Re, 32 L. J. Ch. 43; 413 Sutton's Case, 12 Mod. 557 Sutton v. Baillie, 65 L. T. Sutton v. Temple, 12 M. & Swadling v. Piers, Cro. Jac. Swain v. Ayres, 21 Q. B. I Swaine v. Holman, Hob. 20 Swann v. Falmouth, 8 B. & Swansea Bank v. Thomas, 558; 27 W. R. 491 Swansea (Mayor of) v. The	5 J. P 5 329 re, 26 leathco 1893, 3 7; 9 Ju 528 W. 52 613 D. 289; 4 C. 436 4 Ex.	te, '92, Ch. 16 Tr. N. S Tr. N. S Tr. D. 94; O Q. E	1 L. (1 Ch. 9; 62 J. Ex. J. Q. J	3. R. 2 475; (L. J. C 8 L. 7 17; 7 B. 428;	227-; 18 81 L. J. 86, 149 2h. 946 Jur. 10 36 W.	3 T. L. 393,	R. 895, 2, 48; 218, T. 42 R 235, 8 286, T	125 54 165 112 215 , 43 245 49 405 356 125 508 20 293 242
Sury v. Brown, Latch. 99 Sussex v. Wroth, Cro. Eliz. Sutcliffe v. Wardle, 63 L. T. Sutherland v. Briggs, 1 Has Sutherland (Duke of) v. H. 66 L. T. 210 Sutherland v. Sutherland, 1 186; 42 W. R. 12 Sutton, Re, 32 L. J. Ch. 43; 413 Sutton's Case, 12 Mod. 557 Sutton v. Baillie, 65 L. T. Sutton v. Temple, 12 M. & Swadling v. Piers, Cro. Jac. Swain v. Ayres, 21 Q. B. I. Swaine v. Holman, Hob. 20 Swann v. Falmouth, 8 B. & Swansea Bank v. Thomas, 558; 27 W. R. 491 Swansea (Mayor of) v. The 47 L. T. 657; 31 W. R. Swatman v. Ambler, 8 Ex.	57 J. P 58 J. 329 re, 26 leathco 1893, 3 7; 9 Ju 528 W. 52 613 D. 289; 4 C. 436 4 Ex. comas, 1 2. 506 72	te, '92, Ch. 16 Tr. N. S 13 L. 57 L. D. 94;	1 L. (1 Ch. 9; 62 3. 456; J. Ex. J. Q. 1	J. Q. J. 8; 52	227-; 18 81 L. J. 86, 149 %h. 946 Jur. 10 36 W B. 344; L. J. Q	37. L. 393, Ch. 2 5, 192, 69 L 11 W 285, 40 L 285, 40 L.	R. 895, 2, 48; 218, T. 42 R 235, 8 286, T 40;	125 54 165 112 215 43 245 49 405 356 125 508 20 293 242 240 184
Sury v. Brown, Latch. 99 Sussex v. Wroth, Cro. Eliz. Sutcliffe v. Wardle, 63 L. T. Sutherland v. Briggs, 1 Ha Sutherland (Duke of) v. H. 66 L. T. 210 Sutherland v. Sutherland, 1 186; 42 W. R. 12 Sutton, Re, 32 L. J. Ch. 43; 413 Sutton's Case, 12 Mod. 557 Sutton v. Baillie, 65 L. T. Sutton v. Temple, 12 M. & Swadling v. Piers, Cro. Jac. Swain v. Ayres, 21 Q. B. I Swaine v. Holman, Hob. 20 Swann v. Falmouth, 8 B. & Swansea Bank v. Thomas, 558; 27 W. R. 491 Swansea (Mayor of) v. The 47 L. T. 657; 31 W. R	57 J. P 58 J. 29 re, 26 leathco 1893, 3 7; 9 Ju 528 W. 52 613 D. 289; 4 C. 436 4 Ex. comas, 1 2. 506 72 J. Ex.	te, '92, Ch. 16 ; 13 L. 57 L. D. 94;	1 L. (1 Ch. 9; 62 J. Ex. J. Q. I 48 L	J. Q. J. 8; 52	227-; 18 81 L. J. 86, 149 %h. 946 Jur. 10 36 W B. 344; L. J. Q	285, 40 L. 285, 393, 11 W. 285, 40 L. 3. B. 3	R. 895, 2, 48; 218, T. 285, 81, 286, T 10; 184,	125 54 165 112 215 43 245 49 405 356 125 508 20 293 242 240 184
Sury v. Brown, Latch. 99 Sussex v. Wroth, Cro. Eliz. Sutcliffe v. Wardle, 63 L. T. Sutherland v. Briggs, 1 Ha Sutherland (Duke of) v. H. 66 L. T. 210 Sutherland v. Sutherland, 1 186; 42 W. R. 12 Sutton, Re, 32 L. J. Ch. 43; 413 Sutton's Case, 12 Mod. 557 Sutton v. Baillie, 65 L. T. Sutton v. Temple, 12 M. & Swadling v. Piers, Cro. Jac. Swain v. Ayres, 21 Q. B. I Swaine v. Holman, Hob. 20 Swann v. Falmouth, 8 B. & Swansea Bank v. Thomas, 558; 27 W. R. 491 Swansea (Mayor of) v. The 47 L. T. 657; 31 W. R Swatman v. Ambler, 8 Ex. Swatman v. Ambler, 8 Ex. Swatman v. Commissioners o Q. B. 234; 80 L. T. 56	5 J. P 5 329 re, 26 leathco 1893, 3 7; 9 Ju 528 W. 52 613 D. 289; 4 C. 436 4 Ex. comas, 1 2. 506 72 J. Ex. f Inland 6; 47	te, '92, Ch. 16 T. N. S T. 13 L. 57 L. D. 94; O Q. B 185 d Rever	1 L. 6 1 Ch. 9; 62 J. Ex. J. Q. I 48 L 100; a	J. Q. J. S. 1 Q. 16. '00,	227-; 18 81 L. J. 86, 149 8h. 946 Jur. 10 8. 844; L. J. Q	285, 40 L. 285, 40 L. 393, 285, 40 L. 3. 3. 3. 3. 3. 3. 3. 3. 3. 3. 3. 3. 3.	R. 895, 2, 48; 218, T. 42 R 235, 8 286, T 184, J.	125 54 165 112 215 43 245 49 405 356 125 508 20 293 242 240 184
Sury v. Brown, Latch. 99 Sussex v. Wroth, Cro. Eliz. Sutcliffe v. Wardle, 63 L. T. Sutherland v. Briggs, 1 Ha Sutherland (Duke of) v. H. 66 L. T. 210 Sutherland v. Sutherland, 1 186; 42 W. R. 12 Sutton, Re, 32 L. J. Ch. 43; 413 Sutton's Case, 12 Mod. 557 Sutton v. Baillie, 65 L. T. Sutton v. Temple, 12 M. & Swadling v. Piers, Cro. Jac. Swain v. Ayres, 21 Q. B. I Swaine v. Holman, Hob. 20 Swann v. Falmouth, 8 B. & Swansea Bank v. Thomas, 558; 27 W. R. 491 Swansea (Mayor of) v. The 47 L. T. 657; 31 W. R Swatman v. Ambler, 8 Ex. Swatman v. Ambler, 24 L. Swayne v. Commissioners o Q. B. 234; 80 L. T. 56 L. J. Q. B. 63; 81 L. Z. Sweeney v. Sweeney, Ir. R.	57 J. P 58 J. P 58 J. September 1893, 3 7; 9 Ju 528 W. 52 613 D. 289; 4 C. 436 4 Ex. comas, 1 2. 506 72 J. Ex. f Inlance 6; 47 T. 623; 10 C. J	te, '92, te, '92, te, '92, to, '94; to, '94; to, '94,	1 L. (1 Ch. 9; 62 J. Ex. J. Q. I 48 L 100; a R. 19	J. Q. J. S. 100, 7	227-; 18 81 L. J. 86, 149 %h. 946 Jur. 10 B. 344; L. J. Q B. 335	285, 40 L. 285, 40 L. 393, 285, 40 L. 393, .	R. 895, 2, 48; 218, T. 42 R 235, 8 1, 42 R 10; 184, 4 69	125 54 165 112 215 , 43 245 405 356 125 508 20 293 242 240 184 229
Sury v. Brown, Latch. 99 Sussex v. Wroth, Cro. Eliz. Sutcliffe v. Wardle, 63 L. T. Sutherland v. Briggs, 1 Ha Sutherland (Duke of) v. H. 66 L. T. 210 Sutherland v. Sutherland, 1 186; 42 W. R. 12 Sutton, Re, 32 L. J. Ch. 43; 413 Sutton's Case, 12 Mod. 557 Sutton v. Temple, 12 M. & Swadling v. Piers, Cro. Jac. Swain v. Ayres, 21 Q. B. I Swaine v. Holman, Hob. 20 Swann v. Falmouth, 8 B. & Swansea Bank v. Thomas, 558; 27 W. R. 491 Swansea (Mayor of) v. The 47 L. T. 657; 31 W. R Swatman v. Ambler, 8 Ex. Swatman v. Ambler, 8 Ex. Swatman v. Ambler, 24 L. Swayne v. Commissioners of Q. B. 234; 80 L. T. 56 L. J. Q. B. 63; 81 L.	57 J. P 5 329 re, 26 leathco 1893, 3 7; 9 Ju 528 W. 52 613 D. 289; 4 C. 436 4 Ex. comas, 1 2. 506 72 J. Ex. f Inlance 6; 47 F. 623; 10 C. J S. 119	te, '92, Ch. 16 Ir. N. S 13 L. 57 L. D. 94; O Q. B 185 d Revery W. R. S 48 W. L. 375	1 L. (1 Ch. 9; 62 J. Ex. J. Q. I 48 L 10: 10: 10: 10: 10: 10: 10: 10: 10: 10:	J. Q.	227-; 18 81 L. J. 86, 149 2h. 946 2. 343; Jur. 10 36 W. 36 W. 3. 344; L. J. Q. 3. 345	285, 40 L. 285, 40 L. 393, 285, 40 L. 393, 285, 40 L. 393,	R. 895, 2, 48; 218, T. 42 R 235, 8 10; 184, 4 49 10;	125 54 165 112 215 , 43 245 49 405 356 125 508 20 293 242 240 184 229

	•					_	
Swinharna a Milham O Ann Cas	Q <i>A A</i>	. 84 T	τo	D 4.	KO T.		AGE
Swinburne v. Milburn, 9 App. Cas. 222; 33 W. R. 325	. 033	, •/ = L	. J. Y.	ъ. о,	02 II.		167
Swinfen v. Bacon, 6 H. & N. 184,	 846 :	30 L .	I. Ex.	33, 368	: 6 Jr	ır.	20,
N. S. 1257; 7 Ibid. 897; 3 L.							
The state of the s		•		•		•	566
740 Swire v. Leach, 18 C. B. N. S. 479	; 34]	L. J. C.	. P. 150	; 11 J	ur. N.	S.	
179; 11 L. T. 680; 13 W. R. S	85					258,	313
Sym's Case, Cro. Eliz. 38	••	•••	•••	•••		•••	20
Syme v. Harvey, 24 Sess. Cas. 2nd s	eries,	202	•••	•••	•••	•••	519
Syllivan v. Stradling, 2 Wils. 208.	••	•••	•••	•••	•••	•••	75
M)							
Tabor v. Godfrey, 64 L. J. Q. B. 245	5			•••			565
Tadman v. Henman, '93, 2 Q. B. 168	8 0 T '	···				07	76
Taite v. Gosling, 11 Ch. D. 278; 4	8 L.). Cn. (•		_		4 10
W. R. 394 Talbot v. Shrewsbury (Earl of), 16 E	 ໄດ 96		T Ch	977 •			449
478				-			242
Tamplin v. James, 15 Ch. D. 215 .	••		•••				122
Tancred v. Christy, 12 M. & W. 316		•••	•••				564
Tancred v. Leyland, 16 Q. B. 669;							278
Tanham v. Nicholson, L. R. 5 H. L.	. 561	`•••			•••	•••	478
Tanner v. Christian, 4 E. & B. 591.			•••	•••	•••	•••	72
Tapling v. Weston, C. & E. 99			•••		•••		258
Tarn v. Turner, 39 Ch. D. 456; 57)85 ; 59	L. T.	742;	87	
W. R. 276			•••	•••	•••	•••	68
Tarte v. Darby, 15 M. & W. 601; 1						80,	
Tasker v. Bullman, 3 Ex. 351	 Ø1 T						235
Tassell v. Hallen, '92, 1 Q. B. 321; 40 W. R. 221		_	D. 198	-			347
Tate v. Gleed, 2 Wms. Saund. (ed. 1	1971\		(m)		•••	•••	260
M-A Ol1!- O II DI 100		···	• -	•••	•••	•••	435
	•••	•••	•••			569,	
75 4 D 1 A 37 1 1 AA		•••			•••		182
Taws v. Knowles, '91, 2 Q. B. 564					L. T. 1	24;	
39 W. R. 675	-	_	•••	•••	•••	•••	140
Taylerson v. Peters, 7. A. & E. 110				•••	•••	•••	277
Taylour v. Wildin, L. R. 3 Ex. 303	3; 37	L. J. F	Ex. 173	; 18 L		55;	
	•••	•••	•••	•••	•••	•••	480
Taylor, Ex parte, 8 D. M. & G. 254		•••	•••	•••	•••	•••	10
	••• 90 T	 T 0					13
Taylor v. Caldwell, 3 B. & S. 826; 11 W. R. 726		•			0.5		189
Taylor v. Chapman, Peake, Add. Ca	 a 10	•••	•••	•••	•••	, 00,	490
	•••	•••	•••	•••	•••	51,	
	•••	•••	•••	•••	•••	•••	78
m ')	•••	•••	•••	•••	•••	•••	317
Taylor v. Meads, 34 L. J. Ch. 203;	4 De	G. J. &	S. 597	•••	•••	•••	15
_ _	•••	•••	•••	•••	•••	•••	76
Taylor v. Portington, 7 D. M. & G. S	328	•••	•••	•••	•••	• • •	118
	···	•••		· · ·	•••	440,	
Taylor v. Taylor, 20 Eq. 297; 33 L	. T. 8	9; 23	W. K.	947	•••	•••	48
	 \ T 1	r Ob		 от Т	115.	48	234
Tebb v. Cave, '00, 1 Ch. 642; 69 W. R. 318	, Li. i	о. Сп.	202; 0				401
Manage 4 . Desiling 10 70 4 10	• • •	•••	•••	•••	•••	•••	78
Temple v. Brown, 6 Taunt. 60	•••	•••	•••	•••	•••	•••	118
Templeman v. Case, 10 Mod. 24				•••	•••	•••	308
Tennant v. Field, 8 E. & B. 336; 2	7 L.	J. Q. B	3. 33 : 8			178	
, ,		4		286, 290			
Terrell v. Murray, 17 T. L. R. 570		•••	•••	•••	•••	•••	841
Tew v. Jones, 13 M. & W. 12; 14 I	L. J. 1	Ex. 94	•••	•••	•••	•••	92
Theed v. Starkey, 8 Mod. 314	•••	•••		•••	•••	•••	387
Thetford (Mayor of) v. Tyler, 8 Q. F	s. 95 ;	15 L.	J. Q. B	. 83 ; :	10 Jur.	68	96

					P	age.
Thomas, Re, 21 Q. B. D. 380; 57 L.	J. O. B.	574 : 59	9 L. T	447 :		
W. R. 785	•••	•••	•••	•••		456
Thomas v. Cadwallader, Willes, 496	• • •	•••	•••			342
Thomas v. Cook, 2 B. & A. 119						490
Thomas v. Fredericks, 10 Q. B. 775; 10					•••	126
Thomas v. Harries, 1 Sc. N. R. 524; 1	M. & Gr.	695;9	L. J.	C. P. 30	8;	
4 Jur. 723 Thomas v. Hayward, L. R. 4 Ex. 31	•••	•••	•••	285,	292,	298
Thomas v. Hayward, L. R. 4 Ex. 31	1;38 L	. J. E	t. 175	; 20 L.	T.	
814 Thomas v. Jennings, 66 L. J. Q. B. 5	•••	•••	•••	•••	436,	437
Thomas v. Jennings, 66 L. J. Q. B. 5	; 75 L.	ľ. 274	; 45 W	'. R. 93	!	522,
						528
Thomas v. Lulham, '95, 2 Q. B. 400; 64						
43 W. R. 689	***		•••	•••	•••	502
Thomas v. Mirehouse, 19 Q. B. D. 563						
104 Thomas v. Owen, 20 Q. B. D. 225; 57		•••	•••	•••	319,	320
36 W. R. 440						139
Thomas v. Packer, 1 H. & N. 669;						=
143	•••	•••	•••	•••		497
Thomas v. Patent Lionite Co., 17 Ch.						
	•••					_
	•••			•••		87
	•••					471
Thompson v. Guyon, 5 Sim. 65		•••	•••	···	•••	168
Thompson v. Hakewill, 19 C. B. N.						- 44
Jur. N. S. 732; 13 L. T. 989; 14					64,	160
Thompson v. Lapworth, L. R. 3 C. P. 1	149; 37	L. J. C.	P. 74	; 17 L.	Т.	
507; 16 W. R. 312	•••	•••	•••	•••	389,	
Thompson v. Maberley, 2 Camp. 573	•••	•••	•••	•••	•••	465
Thompson & M'Williams' Contract, Re,	, 1896, 1	Ir. R. 3	356	•••	•••	60
Thompson v. Mashiter, 1 Bing. 283				***	•••	258
Thompson v. Pettitt, 10 Q. B. 101; 16					•••	528
Thompson v. Wood, 4 Q. B. 493; 12 L	. J. Q. B	. 175;	7 Jur.	303	•••	287
Thomson v. Davenport, 9 B. & C. 78	•••	•••	•••	•••	•••	72
Thomson v. Wilson, 2 Stark, 379	•••	•••	•••	• • •	•••	486
Thorn v. Woollcombe, 3 B. & Ad. 586					•••	415
Thorne v. Thorne, '93, 3 Ch. 196; 63	L. J. Ch	. 38; 6	19 L. 1	. 378;	42	
W. R. 282	•••	•••	•••	•••	•••	451
Thorne's S. E., Re, 20 W. R. 587	• •			•••		18
Thornewell v. Johnson, 50 L. J. Ch.	641; 44	L. T.	768;			
677	•••		•••	•••	439,	_
Thornton v. Adams, 5 M. & S. 38	•••	•••	•••	•••	•••	274
Thornton v. Sherratt, 8 Taunt. 529	•••	•••	•••	•••	•••	365
Thoroughgood's Case, 9 Rep. 136 a	•••	•••	•••	• • •	•••	183
Thorp v. Hunt, '86, W. N. 96	•••	•••	•••	•••	100	173
Thorpe v. Brumfitt, 8 Ch. 650	•••	•••	•••		136,	
Thorpe v. Eyre, 1 A. & E. 926	•••	•••	•••	•••	•••	535
Thorpe v. Hurt, '86, W. N. 96	•••	•••	•••	•••	•••	270
Thorpe v. Milligan, 5 W. R. 336	Λ). 010.	44 T	 m 74	00 317		528
Threlfall, Re, 16 Ch. D. 274; 50 L. J.	Cn. 318;	44 L.				100
Threshop w F London Wetermarks O.	 D • 0 <i>0</i>	^0	•••	83		
Thresher v. E. London Waterworks, 2			•••	341,	•	404
Throgmorton v. Whelpdale, Bull. N. P.		•••	•••	•••	•••	
Thrustout v. Coppin, 2 W. Bl. 801	• • •	•••	•••	•••	 88	20
Thunder v. Belcher, 3 East, 449	•••	•••	•••	•••		
Thursby a Facles 70 I I O B 01.	40 W P	991 .	 17 ጥ	T. P. 1		
Thursby v. Eccles, 70 L. J. Q. B. 91;						112
Thwaites v. Wilding, 12 Q. B. D. 4; 82 W. R. 80		-				960
32 W. R. 80	•••	•••	•••	•••	269,	
Thynne v. Glengall, 2 H. L. C. 131 Tichborne v. Weir, 67 L. T. 735	•••	•••	•••	•••	111,	432
Tickle Re 9 More 198	•••	•••	•••	•••	•••	496
Tickle, Re, 3 Morr. 126 Tidey v. Mollett, 16 C. B. N. S. 298; 3	 29 T. T (Y D 09	 5 . 10	Jue W	Q	40 0
800: 10 L. T 380					IJ.	125
UVV 1 AV AM A BUUV						الجديم بر

						10	AGE
Tidswell v. Whitworth, L. R. 2 C.	P. 326	: 39 L	. J. C.	P. 103	: 15 L.		402
574; 15 W. R. 427	•••	,	•••	134. 23	1. 388.	389.	391
Tildesley v. Clarkson, 30 Beav.	419 ; 8	1 L. J.	Ch. 36	32; 8 J	ur. N.	S.	
163; 6 L. T. 98; 10 W. R. 8	28	•	•••		•••	•••	119
Till, Ex parte, 16 Eq. 97; 42 L.	J. Bk.	84; 21	W.R.	574	•••	262,	323
Tilney v. Norris, 1 Ld. Raym. 553	} ´	•••		•••	•••	•••	
Timmins v. Rowlinson, 1 W. Bl.	533; 3	Burr.	1603	•••	•••	568,	569
Timms v. Baker, 49 L. T. 106	•••	•••		•••	•••	171,	413
Tinckler v. Prentice, 4 Taunt. 549		•••	•••	•••	•••	229,	385
Tingrey v. Brown, 1 B. & P. 310	•••	• • •	•••	•••	•••	•••	
Tisdale v. Essex, Hob. 34	•••	•••	• • •	•••		130,	899
Titterton v. Cooper, 9 Q. B. D. 47	'3 ;51]	L. J. Q	. B. 47	2;46 I	J. T. 87	70;	
30 W. R. 866	•••	•••	•••	•••	•••	•••	455
Todd r. Bowie, 4 F. 435	• • •	•••	•••	•••		•••	537
Todd v. Flight, 9 C. B. N. S. 37	7;30]	L. J. C	. P. 21	; 3 L. '	T. 325	; 9	
W. R. 145	•••	•••	•••	•••	•••	•••	335
Todd, Birleston and Co. & North	Eastern	Ry., 1	Re, '03,	1 K. B	6. 603 ;	72	
L. J. K. B. 337; 88 L. T. 360				•••			199
Tod-Heatly v. Benham, 40 Ch. D.				•			
37 W. R. 38	•••		•••	•••	•••	361,	362
Tofield v. Roberts, 10 T. L. R. 437							112
Toleman v. Portbury, L. R. 5 Q.		; 7 Q.	B. 344	; 39 L	. J. Q.		
136; 22 L. T. 33; 18 W. R.	579	•••	•••	•••	•••		363
Toleman v. Portbury, L. R. 6 Q.							
292; 20 W. R. 441	•••		•••		•••	496,	500
Toler v. Slater, L. R. 3 Q. B. 42;		г. Q. в	•		-		
W. R. 124	•••	•••				19,	184
Tolhurst v. Associated, &c., Manuf					J. K.		
834; 89 L. T. 196; 52 W. R	. 143;	19 T. I	L. K. 67	17	•••	•••	419
Tollet v. Tollet, 2 P. Wms. 489	***	•••	***	•••	•••	•••	55
Tolson v. Sheard, 5 C. D. 19; 35		56; 25	W. R.	667	•••	58,	
Tomkins v. Lawrance, 8 C. & P. 7		•••	•••	•••	•••	•••	93
Tomkins v. Pinsent, 2 Ld. Raym.		 01. 05		 M. 16.		151,	220
Tomlinson, Re, '98, 1 Ch. 232; 67	ъ. ј. (Cn. 97	; /8 L.	1. 12;	40 W.		989
299	···	 В Т	195 . 4	 20 T T	140 .		352
Tomlinson v. Consol. Credit Corp W. R. 118	., 24 Q	. D. D.			. 102;		274
Tomlinson v. Day, 2 Br. & B. 680	•••	•••	•••	•••	236,		
Toms r. Luckett, 5 C. B. 23	•••	•••	•••	•••	200,	-	269
Tooker v. Smith, 1 H. & N. 732	•••	•••	•••	•••	•••	98,	
Toplis v. Grane, 5 Bing. N. C. 636	 L · O T.	i c i	2 180		•••	•	282
Torkington v. Magee, '02, 2 K. B.							202
712; 72 <i>Ibid.</i> 336; 87 L. T.				_,			438
Torriano v. Young, 6 C. & P. 8				•••		333,	
Toulmin v. Millar, 58 L. T. 96	•••	•••	•••	•••	•••	•••	71
Towerson v. Jackson, '91, 2 Q. B.		- - -		36:		T.	•
332; 40 W. R. 37	•••	•••	•••	•••	•••	•••	68
Towne v. Campbell, 3 C. B. 921;	16 L. J	. C. P.	128	••• !		•••	467
Towne v. D'Heinriche, 13 C. B.				P. 219	; 17 J	ur.	
1102	•••	•••	•••	•••		192,	330
Townley v. Bedwell, 14 Ves. 591	•••	•••	•••	•••	•••	•	164
Townrow v. Benson, 3 Madd. 203		•••	•••	•••	•••	•••	228
Trader's N. Staff. Co., Rc, 19 E		44 L.	J. Ch.	. 172;	31 L.	T.	
716 ; 23 W. R. 205	- '	•••	• • •	•••		•••	327
Trapper v. Hart, 2 Cr. & M. 153, 1	181;3	L. J. F	Cx. 24	•••	•••	•••	520
Travel's (Lady) Case, 3 Atk. 711		•••	•••	•••	•••	•••	15
Travers v. Mason, 45 W. R. 77		•••	•••	•••	•••		469
Treackle v. Coke, 4 Vern. 164	•••	•••	•••	•••	•••		440
Tredway v. Machin, 91 L. T. 310;			26	•••	•••		345
Treemeere v. Morison, 1 Bing. N.	C. 89	•••	•••				453
Trelogr v. Bigge, L. R. 9 Ex.	151;4	3 L. J	Ex.	95; 23	2 W.	R.	
843					•••	423, ·	
Trent v. Hunt, 9 Ex. 14; 22 L. J.	Ex. 31	8; 17.	Jur. 899	Ð		4, 2	
•					9	297 . :	30 9

						PAC	G TZ
Treport's Case, 6 Rep. 14 b	•••	•••	•••	•••	•••		77
Tress v. Savage, 4 E. & B. 36		L. J.			; 18 3	_	
680		•••	•••	•••	94	, 95, 4	71
Trevivan v. Lawrance, 1 Salk. 270	B		•••			_	-
Trevilian v. Pyne, 11 Mod. 112	•••				•••		81
Triquet v. Bath, 3 Burr. 1478				•••			66
Tritton v. Bankart, 56 L. J.		29; 56	L. T.	•			1.0
474			•••		358,		
Tritton v. Foote, 2 Bro. C. C. 636		• • •	•••	•••	•••		67
Trotman v. Flesher, 3 Giff. 1 Trueman v. Loder, 11 A. & E. 58		•••	•••	•••	•••	••• 1	11 24
Truepenny's Case, cited Cro. Eliz				•••		-	48
Truro Corporation v. Rowe, '01, 2							
Truscott v. Diamond Rock Boring							-
259; 46 L. T. 7; 30 W. R.							37
Tubbs v. Wynne, '97, 1 Q. B. 74							93
Tucker v. Linger, 21 Ch. D. 1							
941; 49 L. T. 373; 32 W. R	L. 40	144	1, 199,	200, 84	13, 350,	369, 3	
Tudgay v. Sampson, 30 L. T. 262		•••			•••	3, 4	06
Tulk v. Moxhay, 2 Ph. 774	•••	•••	- • • • • • • • • • • • • • • • • • • •	•••	•••		_
Tummons v. Ogle, 6 E. & B. 571	; 25 L	. J. Q.	B. 403	•••			12
Tunnicliffe v. Wilmot, 2 C. & K.					•••		10
Turner v. Allday, Tyr. & Gr. 819					•.•• T NT		20
Turner v. Barnes, 2 B. & S. 435							QK
199; 10 W. R. 561 Turner v. Bennett, 9 M. & W. 64						-	71
Turner v. Cameron, L. R. 5 Q. B							
525; 18 W. R. 544		, 00 11.		0. 120	, 22 13.	513, 5	14
Turner v. Cameron's, &c., Co., 5					•••		92
Turner v. Ford, 15 M. & W. 212				•••	•••	294, 3	
Turner v. Hardy, 9 M. & W. 770	•••	•••	•••	•••	•••		91
Turner v. Hutchinson, 2 F. & F.	185	•••	•••	•••	• • •	•••	71
Turner v. Lamb, 14 M. & W. 412	2	•••	•••	•••	•••	3	46
Turner v. Meymott, 1 Bing. 158	•••	•••	•••	•••	•••		69
Turner v. Power, 7 B. & C. 625		•••	•••	•••	122,		
Turney v. Sturges, Dyer, 91 a					•••		19
Tutton v. Darke, 5 H. & N. 647	; 29 L.	. J. Ex.	271;	6 Jur.	N. S. 9	-	
2 L. T. 361	•••	•••	•••	•••	•••		277
Twiss v. Noblet, Ir. R. 4 Eq. 64	٠	•••	•••	•••	•••		73
Twynam v. Pickard, 2 B. & A. 10 Tyley v. Seed, Skin. 649							149 166
Tyson v. Smith, 9 A, & E. 406	•••	•••	•••				869
1 Jaon v. Simon, v A, & D. 400	•••	•••	•••	•••	•••	•••	,03
Underhay v. Read, 20 Q. B. D.	200 -	57 T. J	. O. F	3. 129	58 T.	Т.	
457; 86 W. R. 298					68, 69,		234
Underwood v. Burrows, 7 C. & P.		•••			•	•	
United Club, Re, 60 L. T. 665	•••				•••		
Upton v. Ferguson, 3 Moo. & Sc.		•••		•••			888
Upton v. Townend, Upton v. Gre	eenlees	, 17 C.	B. 30	; 25 L	. J. C.	P.	
44; 1 Jur. N. S. 1089	•••	•••	•••	•••	•••	236, 2	37
T 1 4 6	_			m 401	_	•	
Vale & Sons v. Moorgate Street,							861
Vale of Neath Colliery Co. v. Fur	•						Λ9
24 W. R. 631	100.	ro T	T "O	D 74	 . 61 T		03
Valentine v. Canali, 24 Q. B. D.	100;	DA Tr	J. Q.	D. /4	; 01 L.	. 1.	10
731; 38 W. R. 331 Valliant v. Dodemede, 2 Atk. 54	A		• • •	•••	•••	440, 4	
Valpy v. St. Leonards Wharf Co.	_ R7_T	P. 402	: 1 L.	G. R. 3	305	393, 3	
Van v. Corpe, 3 My. & K. 269	, 0, 0.		, 1 11.		•••	156, 4	
Van Grutten v. Trevenen, '02, 2	K. R			J. K. 1	B. 544 :	•	
L. T. 344; 50 W. R. 516;				•••		467, 4	77
Vance v. Vance, Ir. R. 5 C. L. 36	33	•••	•••	•••		4	80
Varley v. Coppard, L. R. 7 C. P.	505;	26 L. T	. 882;	20 W.	R. 972	4	22
Vasper v. Eddows, 1 Salk. 248	•••	•••	•••	•••	***	2	93

Vanchan Francis I D 0 0 D	114.94	. T T	M (1)	17.15	717 D		AGE 570
Vaughan, Ex parte, L. R. 2 Q. B. Vaughan v. Davies, 1 Esp. 257	•			11; 16	, w. R.	190	579 315
Vaughan v. Hancock, 3 C. B. 766	; 16 L.	J. C.	P. 1	•••		•••	106
Vaux's (Lord) Case, Cro. Eliz. 269)	•••	•••		•••		148
Veale v. Warner, 1 Wms. Saund.	•		•		_		75
Venning v. Bray, 2 B. & S. 502; 1039; 6 L. T. 327; 10 W. R.						D.	224
Verlander v. Codd, T. & R. 352						•••	109
Vernon r. Smith, 5 B. & A. 1	•••	•••	•••	•••	•••	382,	
Vertue v. Beasiey, 1 Moo. & Rob.						· · ·	298
Vezey v. Rashleigh, '04, 1 Ch. 634 W. R. 443	; /8 L.	J. Ch	. 422 ;	90 L.	1.003;	δZ	121
Vigers v. Dean and Chapter of St.	Paul's.	14 Q.	B. 909	9. 920	: 18 L.	J.	
Q. B. 97; 19 Ibid. 64; 14 Ju	u r. 1017	•••	•••	•••			23
Villiers v. Oldcorn, 20 T. L. R. 11					•••	•••	421
Vincent v. Godson, 4 D. M. & G.							242 182
Viney v. Chaplin, 4 Drew. 237; 2 Vint v. Constable, 25 L. T. 324							
Vitale, Exparts, 47 L. T. 480							
Vivian c. Blomberg, 3 Bing. N. C.	2. 311	•••	•••	•••	•••	•••	27
Vivian v. Champion, 2 Ld. Raym.	1125	•••	•••	•••	•••	•••	346
Vivian v. Jegon, L. R. 3 H. L.	. 285;	37 L.	J. C.	P. 313	; 19 L.		.
218 Vivian v. Moat, 16 Ch. D. 730; 5	in I. I	Ch s	 RR1 · 4	4 T. 1	 r 910 ·		, 53
W. R. 504						•••	481
Voisey, Ex parte, 21 Ch. D. 442;	52 L. J	J. Ch.	121:	47 L. '	Г. 362;		
W. R. 19	•••	•••	83	, 84, 1	24, 151,	248,	
Vonhollen v. Knowles, 12 M. & W.	-						
Von Knoop v. Moss, 7 T. L. R. 50					•••		
Vowles v. Miller, 3 Taunt. 137 Vyvyan v. Arthur, 1 B. & C. 410		•••	•••	•••	 218,	435.	445
vyvysta v. Mitadi, 1 2. t. c. 410	•••	•••	•••	•••		, 200,	2.0
Waddilove v. Barnett, 2 Bing. N.				•••			225
Wade v. Baker, 1 Ld. Raym. 131							8
Wadham v. Marlowe, 8 East, 314,			MIATI D				455
			_				455
Wadham v. Postmaster-General, L	. R. 6 Q	. В. 6	44; 40	I. J.	Q. B. 3	10;	
Wadham v. Postmaster-General, L 24 L. T. 545; 19 W. R. 1082	. R. 6 Q	. B. 6	44; 40	I. J.	Q. B. 3	10;	359 535
Wadham v. Postmaster-General, L 24 L. T. 545; 19 W. R. 1082 Wagstaff v. Clinton, C. & E. 45 Wain v. Warlters, 5 East, 10	. R. 6 Q	. B. 6	44; 4(Q. B. 3	10;	359
Wadham v. Postmaster-General, L 24 L. T. 545; 19 W. R. 1082 Wagstaff v. Clinton, C. & E. 45 Wain v. Warlters, 5 East, 10 Wake v. Hall, 7 Q. B. D. 295; 8	. R. 6 Q App. C	. B. 6 as. 19	44; 4(5; 52) I J. L. J.	Q. B. 3 Q. B. 4	10 ; 94 ;	359 536 108
Wadham v. Postmaster-General, L 24 L. T. 545; 19 W. R. 1082 Wagstaff v. Clinton, C. & E. 45 Wain v. Warlters, 5 East, 10 Wake v. Hall, 7 Q. B. D. 295; 8 48 L. T. 834; 31 W. R. 585	App. C	. B. 6 as. 19	44; 4(5; 52	L. J. L. J. 513, 5	Q. B. 3 Q. B. 4 14, 518,	10; .94; 519,	359 535 108 520
Wadham v. Postmaster-General, L 24 L. T. 545; 19 W. R. 1082 Wagstaff v. Clinton, C. & E. 45 Wain v. Warlters, 5 East, 10 Wake v. Hall, 7 Q. B. D. 295; 8 48 L. T. 834; 31 W. R. 585 Wakefield v. Brown, 9 Q. B. 209;	App. C	. B. 6 as. 19 J. Q.	44; 40 5; 52 B. 373	I J L. J. 513, 5 ; 10 J	Q. B. 3 Q. B. 4 14, 518, ur. 853	10 ; 94 ; 519,	359 535 108 520 435
Wadham v. Postmaster-General, L 24 L. T. 545; 19 W. R. 1082 Wagstaff v. Clinton, C. & E. 45 Wain v. Warlters, 5 East, 10 Wake v. Hall, 7 Q. B. D. 295; 8 48 L. T. 834; 31 W. R. 585 Wakefield v. Brown, 9 Q. B. 209; Wakeman v. Lindsey, 14 Q. B. 62	App. C ; 15 L. 25; 19	. B. 6 as. 19 J. Q. L. J.	44; 40 5; 52 B. 373 Q. B. 1	L. J. 513, 5; 10 J	Q. B. 3 Q. B. 4 14, 518, ur. 853	10 ; .94 ; .519,	359 535 108 520 435 297
Wadham v. Postmaster-General, L 24 L. T. 545; 19 W. R. 1082 Wagstaff v. Clinton, C. & E. 45 Wain v. Warlters, 5 East, 10 Wake v. Hall, 7 Q. B. D. 295; 8 48 L. T. 834; 31 W. R. 585 Wakefield v. Brown, 9 Q. B. 209;	App. C ; 15 L. 25; 19 36, '04,	B. 6 as. 19 J. Q. L. J. (1)	44; 40 5; 52 B. 373 Q. B. 1 R. 240	L. J. 513, 5; 10 J	Q. B. 3 Q. B. 4 14, 518, ur. 853	10 ; .94 ; .519,	359 535 108 520 435 297 352 109
Wadham v. Postmaster-General, L 24 L. T. 545; 19 W. R. 1082 Wagstaff v. Clinton, C. & E. 45 Wain v. Warlters, 5 East, 10 Wake v. Hall, 7 Q. B. D. 295; 8 48 L. T. 834; 31 W. R. 585 Wakefield v. Brown, 9 Q. B. 209; Wakeman v. Lindsey, 14 Q. B. 62 Waldron and Bogue's Contract, R. Waldron v. Jacob, Ir. R. 5 Eq. 13 Walker, Re, 64 L. J. Q. B. 783;	App. C ; 15 L. 25; 19 3e, '04,	J. Q. L. J. Q.	44; 40 5; 52 B. 373 Q. B. 1 R. 240	L. J. 513, 5; 10 J	Q. B. 3 Q. B. 4 14, 518, ur. 853	10 ; 94 ; 519, 	359 535 108 520 435 297 352 109 460
Wadham v. Postmaster-General, L 24 L. T. 545; 19 W. R. 1082 Wagstaff v. Clinton, C. & E. 45 Wain v. Warlters, 5 East, 10 Wake v. Hall, 7 Q. B. D. 295; 8 48 L. T. 834; 31 W. R. 585 Wakefield v. Brown, 9 Q. B. 209; Wakeman v. Lindsey, 14 Q. B. 62 Waldron and Bogue's Contract, R. Waldron v. Jacob, Ir. R. 5 Eq. 13 Walker, Re, 64 L. J. Q. B. 783; Walker's Case, 3 Rep. 22 a	App. C ; 15 L. 25; 19 3c, '04, 72 L. T.	J. Q. L. J. (1 Ir.)	44; 40 5; 52 B. 373 Q. B. 1 R. 240	I. J. 513, 5; 10 J	Q. B. 3 Q. B. 4 14, 518, ur. 853 239,	10; , 94; 519, 	359 535 108 520 435 297 352 109 460 441
Wadham v. Postmaster-General, L 24 L. T. 545; 19 W. R. 1082 Wagstaff v. Clinton, C. & E. 45 Wain v. Warlters, 5 East, 10 Wake v. Hall, 7 Q. B. D. 295; 8 48 L. T. 834; 31 W. R. 585 Wakefield v. Brown, 9 Q. B. 209; Wakeman v. Lindsey, 14 Q. B. 62 Waldron and Bogue's Contract, R Waldron v. Jacob, Ir. R. 5 Eq. 13 Walker, Re, 64 L. J. Q. B. 783; Walker's Case, 3 Rep. 22 a Walker v. Ballamie, Cro. Jac. 102	App. C ; 15 L. 25; 19 3e, '04, 72 L. T.	J. Q. L. J. Q. 1 Ir. 3	44; 40 5; 52 B. 373 Q. B. 1 R. 240	L. J. 513, 5; 10 J	Q. B. 3 Q. B. 4 14, 518, ur. 853	10; , 94; 519, , 240,	359 535 108 520 435 297 352 109 460 441 423
Wadham v. Postmaster-General, L 24 L. T. 545; 19 W. R. 1082 Wagstaff v. Clinton, C. & E. 45 Wain v. Warlters, 5 East, 10 Wake v. Hall, 7 Q. B. D. 295; 8 48 L. T. 834; 31 W. R. 585 Wakefield v. Brown, 9 Q. B. 209; Wakeman v. Lindsey, 14 Q. B. 62 Waldron and Bogue's Contract, R Waldron v. Jacob, Ir. R. 5 Eq. 13 Walker, Re, 64 L. J. Q. B. 783; Walker's Case, 3 Rep. 22 a Walker v. Ballamie, Cro. Jac. 102 Walker v. Giles, 6 C. B. 662; 18	App. C ; 15 L. 25; 19 3c, '04, 72 L. T.	. B. 6 as. 19 J. Q. L. J. 1 Ir 330	44; 40 5; 52 B. 373 Q. B. 1 K. 240	I. J. 513, 5; 10 J	Q. B. 3 Q. B. 4 14, 518, ur. 853 239,	10; , 94; 519, 	359 535 108 520 435 297 352 109 460 441 423 83
Wadham v. Postmaster-General, L 24 L. T. 545; 19 W. R. 1082 Wagstaff v. Clinton, C. & E. 45 Wain v. Warlters, 5 East, 10 Wake v. Hall, 7 Q. B. D. 295; 8 48 L. T. 834; 31 W. R. 585 Wakefield v. Brown, 9 Q. B. 209; Wakeman v. Lindsey, 14 Q. B. 62 Waldron and Bogue's Contract, R Waldron v. Jacob, Ir. R. 5 Eq. 13 Walker, Re, 64 L. J. Q. B. 783; Walker's Case, 3 Rep. 22 a Walker v. Ballamie, Cro. Jac. 102	App. C ; 15 L. 25; 19 3e, '04, 72 L. T. 2 L. J. C 80 L. J.	J. Q. L. J. Q. 1 Ir. 3	44; 40 5; 52 B. 373 Q. B. 1 R. 240 23	L. J. 513, 5; 10 J	Q. B. 3 Q. B. 4 14, 518, ur. 853	10; , 94; 519, , 240, , 97,	359 535 108 520 435 297 352 109 460 441 423 83
Wadham v. Postmaster-General, L 24 L. T. 545; 19 W. R. 1082 Wagstaff v. Clinton, C. & E. 45 Wain v. Warlters, 5 East, 10 Wake v. Hall, 7 Q. B. D. 295; 8 48 L. T. 834; 31 W. R. 585 Wakefield v. Brown, 9 Q. B. 209; Wakeman v. Lindsey, 14 Q. B. 62 Waldron and Bogue's Contract, R Waldron v. Jacob, Ir. R. 5 Eq. 13 Walker, Re, 64 L. J. Q. B. 783; Walker, Re, 64 L. J. Q. B. 783; Walker v. Ballamie, Cro. Jac. 102 Walker v. Giles, 6 C. B. 662; 18 Walker v. Gode, 6 H. & N. 594; Walker v. Hatton, 10 M. & W. 25 Walker v. Hobbs & Co., 23 Q. B.	App. C ; 15 L. 25; 19; 26, '04, 72 L. T. L. J. C 30 L. J. 49 D. 458	J. Q. L. J. Q. 1 Ir. 3	44; 40 5; 52 B. 373 Q. B. 1 R. 240	L. J. 513, 5 ; 10 J 66	Q. B. 3 Q. B. 4 14, 518, ur. 853 239,	10; , 94; 519, , 240, , 97, 836, T.	359 535 108 520 435 297 352 109 460 441 423 83 470 417
Wadham v. Postmaster-General, L 24 L. T. 545; 19 W. R. 1082 Wagstaff v. Clinton, C. & E. 45 Wain v. Warlters, 5 East, 10 Wake v. Hall, 7 Q. B. D. 295; 8 48 L. T. 834; 31 W. R. 585 Wakefield v. Brown, 9 Q. B. 209; Wakeman v. Lindsey, 14 Q. B. 62 Waldron and Bogue's Contract, R Waldron v. Jacob, Ir. R. 5 Eq. 13 Walker, Re, 64 L. J. Q. B. 783; Walker, Re, 64 L. J. Q. B. 783; Walker v. Ballamie, Cro. Jac. 102 Walker v. Giles, 6 C. B. 662; 18 Walker v. Gode, 6 H. & N. 594; Walker v. Hatton, 10 M. & W. 24 Walker v. Hobbs & Co., 23 Q. B. 688; 38 W. R. 63	App. C ; 15 L. 25; 19; 3e, '04, 72 L. T. L. J. C 30 L. J. 49 D. 458	B. 6 as. 19 J. Q. L. J. 1 Ir. 330 F. 33	44; 40 5; 52 B. 373 Q. B. 3 Ř. 240 172	L. J. 513, 5; 10 J 66 B. 95	Q. B. 3 Q. B. 4 14, 518, ur. 853 239, 3; 61 L	10; , 94; 519, , 240, , 97, 836, T.	359 535 108 520 435 297 352 109 460 441 423 83 470 417
Wadham v. Postmaster-General, L 24 L. T. 545; 19 W. R. 1082 Wagstaff v. Clinton, C. & E. 45 Wain v. Warlters, 5 East, 10 Wake v. Hall, 7 Q. B. D. 295; 8 48 L. T. 834; 31 W. R. 585 Wakefield v. Brown, 9 Q. B. 209; Wakeman v. Lindsey, 14 Q. B. 62 Waldron and Bogue's Contract, R Waldron v. Jacob, Ir. R. 5 Eq. 13 Walker, Re, 64 L. J. Q. B. 783; Walker, Re, 64 L. J. Q. B. 783; Walker v. Ballamie, Cro. Jac. 102 Walker v. Giles, 6 C. B. 662; 18 Walker v. Gode, 6 H. & N. 594; Walker v. Hatton, 10 M. & W. 24 Walker v. Hobbs & Co., 23 Q. B. 688; 38 W. R. 63 Walker v. Reeve, 2 Dougl. 461, n	App. C ; 15 L. 25; 19; 26, '04, 72 L. T. L. J. C 30 L. J. 49 D. 458	J. Q. L. J. 1 Ir. 330 59 I	44; 40 5; 52 B. 373 Q. B. 1 R. 240 23 172	L. J. 513, 5 ; 10 J 66	Q. B. 3 Q. B. 4 14, 518, ur. 853 239, 3; 61 L	10; , 94; 519, , 240, , 97, 836, T.	359 535 108 520 435 297 352 109 460 441 423 83 470 417 334 452
Wadham v. Postmaster-General, L 24 L. T. 545; 19 W. R. 1082 Wagstaff v. Clinton, C. & E. 45 Wain v. Warlters, 5 East, 10 Wake v. Hall, 7 Q. B. D. 295; 8 48 L. T. 834; 31 W. R. 585 Wakefield v. Brown, 9 Q. B. 209; Wakeman v. Lindsey, 14 Q. B. 62 Waldron and Bogue's Contract, R Waldron v. Jacob, Ir. R. 5 Eq. 13 Walker, Re, 64 L. J. Q. B. 783; Walker, Re, 64 L. J. Q. B. 783; Walker v. Ballamie, Cro. Jac. 102 Walker v. Giles, 6 C. B. 662; 18 Walker v. Gode, 6 H. & N. 594; Walker v. Hatton, 10 M. & W. 24 Walker v. Hobbs & Co., 23 Q. B. 688; 38 W. R. 63 Walker v. Reeve, 2 Dougl. 461, n	App. C ; 15 L. 25; 19; 26, '04, 72 L. T. L. J. C 30 L. J. 49 D. 458	J. Q. L. J. 1 Ir. 330 59 I	44; 40 5; 52 B. 373 Q. B. 1 R. 240 23 172	L. J. 513, 5 ; 10 J 66	Q. B. 3 Q. B. 4 14, 518, ur. 853 239, 3; 61 L	10; , 94; 519, , 240, , 97, 836, T.	359 535 108 520 435 297 352 109 460 441 423 83 470 417 334 452
Wadham v. Postmaster-General, L 24 L. T. 545; 19 W. R. 1082 Wagstaff v. Clinton, C. & E. 45 Wain v. Warlters, 5 East, 10 Wake v. Hall, 7 Q. B. D. 295; 8 48 L. T. 834; 31 W. R. 585 Wakefield v. Brown, 9 Q. B. 209; Wakeman v. Lindsey, 14 Q. B. 62 Waldron and Bogue's Contract, R Waldron v. Jacob, Ir. R. 5 Eq. 13 Walker, Re, 64 L. J. Q. B. 783; Walker, Re, 64 L. J. Q. B. 783; Walker v. Ballamie, Cro. Jac. 102 Walker v. Giles, 6 C. B. 662; 18 Walker v. Gode, 6 H. & N. 594; Walker v. Hatton, 10 M. & W. 24 Walker v. Hobbs & Co., 23 Q. B. 688; 38 W. R. 63	App. C ; 15 L. 25; 19; 26, '04, 72 L. T. L. J. C 30 L. J. 49 D. 458	. B. 6 as. 19 J. Q. L. J. 1 Ir 330 P. 33 Sylvania (1) 150	44; 40 5; 52 B. 373 Q. B. 1 R. 240 172 L. J. Q 9 0; 3 K	L. J. 513, 5; 10 J 66.	Q. B. 3 Q. B. 4 14, 518, ur. 853 239, 3; 61 L	10; , 94; 519, , 240, , 97, 836, T.	359 535 108 520 435 297 352 109 460 441 423 83 470 417 334 452 490 2
Wadham v. Postmaster-General, L 24 L. T. 545; 19 W. R. 1082 Wagstaff v. Clinton, C. & E. 45 Wain v. Warlters, 5 East, 10 Wake v. Hall, 7 Q. B. D. 295; 8 48 L. T. 834; 31 W. R. 585 Wakefield v. Brown, 9 Q. B. 209; Wakeman v. Lindsey, 14 Q. B. 62 Waldron and Bogue's Contract, R Waldron v. Jacob, Ir. R. 5 Eq. 13 Walker, Re, 64 L. J. Q. B. 783; Walker's Case, 3 Rep. 22 a Walker v. Ballamie, Cro. Jac. 102 Walker v. Giles, 6 C. B. 662; 18 Walker v. Gode, 6 H. & N. 594; Walker v. Hatton, 10 M. & W. 2: Walker v. Hobbs & Co., 23 Q. B. 688; 38 W. R. 63 Walker v. Reeve, 2 Dougl. 461, n Walker v. Richardson, 2 M. & W. Walker v. Wakeman, 1 Ventr. 29 Wallace v. M'Laren, 1 Man. & Ry	App. C ; 15 L. 25; 19; 26, '04, 72 L. T. 2 L. J. C 30 L. J. 49 D. 458 .; 3 Do 882 4; 2 Le	. B. 6 as. 19 J. Q. L. J. 1 Ir 330 P. 33 Sylvania (1) 150	44; 40 5; 52 B. 373 Q. B. 1 R. 240 172 L. J. Q 9 0; 3 K	L. J. 513, 5; 10 J 66.	Q. B. 3 Q. B. 4 14, 518, ur. 853 239, 3; 61 L	10; , 94; 519, , 240, , 97, 836, T. 441, 39,	359 535 108 520 435 297 352 109 460 441 423 83 470 417 334 452 490 2 315 225
Wadham v. Postmaster-General, L 24 L. T. 545; 19 W. R. 1082 Wagstaff v. Clinton, C. & E. 45 Wain v. Warlters, 5 East, 10 Wake v. Hall, 7 Q. B. D. 295; 8 48 L. T. 834; 31 W. R. 585 Wakefield v. Brown, 9 Q. B. 209; Wakeman v. Lindsey, 14 Q. B. 62 Waldron and Bogue's Contract, R Waldron v. Jacob, Ir. R. 5 Eq. 13 Walker, Re, 64 L. J. Q. B. 783; Walker's Case, 3 Rep. 22 a Walker v. Ballamie, Cro. Jac. 102 Walker v. Giles, 6 C. B. 662; 18 Walker v. Gode, 6 H. & N. 594; Walker v. Hatton, 10 M. & W. 24 Walker v. Hobbs & Co., 23 Q. B. 688; 38 W. R. 63 Walker v. Reeve, 2 Dougl. 461, n Walker v. Richardson, 2 M. & W. Walker v. Wakeman, 1 Ventr. 29 Wallace v. King, 1 H. Bl. 13 Wallace v. M'Laren, 1 Man. & Ry Waller v. Andrews, 3 M. & W. 31	App. C ; 15 L. 25; 19 3e, '04, 72 L. T. L. J. C 30 L. J. 49 D. 458 .; 3 Do 882 4; 2 Le 7. 516	B. 6 as. 19 J. Q. L. J. 330 P. 33 Ex. ; 59 ougl. 1	44; 40 5; 52 B. 373 Q. B. 3 R. 240 172 L. J. Q	L. J. 513, 5; 10 J 66 2. B. 95	Q. B. 3 Q. B. 4 14, 518, ur. 853 239, 3; 61 L	10; , 94; 519, , 240, , 336, T, 441, 39, ,	359 535 108 520 435 297 352 109 460 441 423 83 470 417 334 452 490 2 315 225 398
Wadham v. Postmaster-General, L 24 L. T. 545; 19 W. R. 1082 Wagstaff v. Clinton, C. & E. 45 Wain v. Warlters, 5 East, 10 Wake v. Hall, 7 Q. B. D. 295; 8 48 L. T. 834; 31 W. R. 585 Wakefield v. Brown, 9 Q. B. 209; Wakeman v. Lindsey, 14 Q. B. 62 Waldron and Bogue's Contract, R Waldron v. Jacob, Ir. R. 5 Eq. 13 Walker, Re, 64 L. J. Q. B. 783; Walker's Case, 3 Rep. 22 a Walker v. Ballamie, Cro. Jac. 102 Walker v. Giles, 6 C. B. 662; 18 Walker v. Gode, 6 H. & N. 594; Walker v. Hatton, 10 M. & W. 24 Walker v. Hobbs & Co., 23 Q. B. 688; 38 W. R. 63 Walker v. Reeve, 2 Dougl. 461, n Walker v. Richardson, 2 M. & W. Walker v. Wakeman, 1 Ventr. 29 Wallace v. M'Laren, 1 Man. & Ry Wallace v. M'Laren, 1 Man. & Ry Waller v. Andrews, 3 M. & W. 31 Wallis v. Delmar, 29 L. J. Ex. 27	App. C ; 15 L. 25; 19 26, '04, 72 L. T. 2 72 L. T. 2 30 L. J. 49 D. 458 .; 3 Do 882 4; 2 Le 7. 516	B. 6 as. 19 J. Q. L. J. Q. 1 Ir. 1 330 ; 59 1 ougl. 1	44; 40 5; 52 B. 373 Q. B. 1 R. 240 172 L. J. Q. 9	L. J. 513, 5; 10 J 66 B. 93	Q. B. 3 Q. B. 4 14, 518, ur. 853 239,	10; , 94; 519, , 240, , 97, 836, T. 441, 39, , 64, 231, 462,	359 535 108 520 435 297 352 109 460 441 423 83 470 417 334 452 490 2 315 225
Wadham v. Postmaster-General, L 24 L. T. 545; 19 W. R. 1082 Wagstaff v. Clinton, C. & E. 45 Wain v. Warlters, 5 East, 10 Wake v. Hall, 7 Q. B. D. 295; 8 48 L. T. 834; 31 W. R. 585 Wakefield v. Brown, 9 Q. B. 209; Wakeman v. Lindsey, 14 Q. B. 62 Waldron and Bogue's Contract, R Waldron v. Jacob, Ir. R. 5 Eq. 13 Walker, Re, 64 L. J. Q. B. 783; Walker's Case, 3 Rep. 22 a Walker v. Ballamie, Cro. Jac. 102 Walker v. Giles, 6 C. B. 662; 18 Walker v. Gode, 6 H. & N. 594; Walker v. Hatton, 10 M. & W. 25 Walker v. Hobbs & Co., 23 Q. B. 688; 38 W. R. 63 Walker v. Reeve, 2 Dougl. 461, n Walker v. Richardson, 2 M. & W. Walker v. Wakeman, 1 Ventr. 29 Wallace v. M'Laren, 1 Man. & Ry Wallace v. Andrews, 3 M. & W. 31 Wallis v. Delmar, 29 L. J. Ex. 27 Wallis v. Hands, '93, 2 Ch. 75; 6 W. R. 471	App. C ; 15 L. 25; 19 3e, '04, 72 L. T. L. J. C 30 L. J. 49 D. 458 .; 3 Do 882 4; 2 Le 7. 516 12 12 13. C	B. 6 as. 19 J. Q. L. J. 330 P. 33 Ex. ; 59 ougl. 1	44; 40 5; 52 B. 373 Q. B. 3 R. 240 172 L. J. Q 9 586;	L. J. 513, 5; 10 J 66 B. 95	Q. B. 3 Q. B. 4 14, 518, ur. 853 239, 3; 61 L T. 428; 92, 399	10; , 94; 519, , 240, , 336, T, 441, 39, , 462, 414, 404.	359 535 108 520 435 297 352 109 460 441 423 470 417 334 452 490 2 315 225 398 464
Wadham v. Postmaster-General, L 24 L. T. 545; 19 W. R. 1082 Wagstaff v. Clinton, C. & E. 45 Wain v. Warlters, 5 East, 10 Wake v. Hall, 7 Q. B. D. 295; 8 48 L. T. 834; 31 W. R. 585 Wakefield v. Brown, 9 Q. B. 209; Wakeman v. Lindsey, 14 Q. B. 62 Waldron and Bogue's Contract, R Waldron v. Jacob, Ir. R. 5 Eq. 13 Walker, Re, 64 L. J. Q. B. 783; Walker's Case, 3 Rep. 22 a Walker v. Ballamie, Cro. Jac. 102 Walker v. Giles, 6 C. B. 662; 18 Walker v. Gode, 6 H. & N. 594; Walker v. Hatton, 10 M. & W. 24 Walker v. Hobbs & Co., 23 Q. B. 688; 38 W. R. 63 Walker v. Reeve, 2 Dougl. 461, n Walker v. Richardson, 2 M. & W. Walker v. Wakeman, 1 Ventr. 29 Wallace v. M'Laren, 1 Man. & Ry Wallace v. M'Laren, 1 Man. & Ry Waller v. Andrews, 3 M. & W. 31 Wallis v. Delmar, 29 L. J. Ex. 27	App. C ; 15 L. 25; 19 3e, '04, 72 L. T. L. J. C 30 L. J. 49 D. 458 .; 3 Do 882 4; 2 Le 7. 516 12 12 13. C	B. 6 as. 19 J. Q. L. J. 330 P. 33 Ex. ; 59 ougl. 1	44; 40 5; 52 B. 373 Q. B. 3 R. 240 172 L. J. Q 9 586;	L. J. 513, 5; 10 J 66 b. 598	Q. B. 3 Q. B. 4 14, 518, ur. 853 239, 3; 61 L T. 428; 92, 399	10; , 94; 519, , 240, , 336, T, 441, 39, , 462, 414, 404.	359 535 108 520 435 297 352 109 460 441 423 470 417 334 452 490 2 315 225 398 464

						7107
Wollie & Cavill 9 Inter 1599						PAGE
Wallis v. Savill, 2 Lutw. 1532	KO T	t Ch	145	47 T	T 900	Z00
Wallis v. Smith, 21 Ch. D. 243;						
W. R. 214	•••	•••	•••	•••	•••	163
Walls v. Atcheson, 3 Bing. 462 Walmsley v. Milne, 7 C. B. N. S.	115 . (O T T	p	07.4	Ton N	201, 400 1 Q
105. 1 T T 20	110; 2	. д. д.	. U. P.	87; 0	JUF. I	1. D. K17 K01
Welmole (Lord) at Lord Orford						
Walpole (Lord) v. Lord Orford, 3	D 946). <i>41</i> T	T (1	D 11	 A . 20 T	· ··· 110
Walrond v. Hawkins, L. R. 10 C.	. F. 347	2; 44 1	J. J. C.	. F. 11	0; 321	, I.
119; 23 W. R. 390 Walsal v. Heath, Cro. Eliz. 656	•••	•••	•••	•••	•••	19
Walsh v. Fussel, 6 Bing. 163						
Walsh v. Lonsdale, 21 Ch. D. 9	. 59 T.	T Ch	. 9 . 4	ig T.	ጥ <u>የ</u> ደደ	• 91
W. R. 109 81, 82, 8						
• •	-	•	•	-	•	AV0 400
Walsh v. Walsh, 1 Ir. Eq. R. 209	.					262
Walter v. Rumball, 1 Ld. Raym.	53	•••	•••	•••	292	297, 302
Walter v. Selfe, 4 De G. & Sm. 3	15	•••		•••		361
Walter v. Yalden, '02, 2 K. B. 30	04:71	L. J. K	. B. 69	3 : 87	L. T.	97 :
51 W R. 46						
Walters v. Northern Coal Mining	Co., 5	D. M.	& G. 6	29: 2	5 L. J.	Ch.
633	•••	• • •	•••	•••	3	6, 59, 116
683 Walton, Ex parte, 17 Ch. D. 74	6; 50	L. J. C	h. 657	; 45 I	. T. 1	; 30
W. R. 395						
Walton v. Johnson, 15 Sim. 352					•••	369
Walton v. Waterhouse, 2 Wms. S	kaund. (ed. 187	1) 826	•••	•••	75
Wankford v. Wankford, 1 Salk.	299	•••	•••	•••	•••	60, 61
Wansborough v. Maton, 4 A. & B			•••	•••		513
Ward v. Andrews, 2 Chit. 636	•••	•••	•••	•••	•••	020
Ward v. Byrne, 5 M. & W. 548	•••	•••	•••		•••	357
Ward v. Const, 10 B. & C. 635		. •••				, 231, 387
Ward v. Day, 4 B. & S. 337; 5 1	bid. 35		-		.*	
578; 12 W. R. 829	···	87	7, 213,	214, 2	47, 500	, 501, 502
Ward v. Dudley (Countess), 57 L	. T. 20	•••	•••			518
Ward v. Hartpole, 3 Bligh, 470	•••	•••	•••	•••	• • •	73
						210
Ward v. Henley, 1 Y. & J. 285			T7 00			310
Ward v. Lumley, 5 H. & N. 87,	656; 29					310 84 492
Ward v. Lumley, 5 H. & N. 87, 6 Ware v. Monaghan, 11 T. L. R. 5	656; 29 529	L. J.	Ex. 32	2;8 \ 	V. R. 1	310 84 492 164
Ward v. Lumley, 5 H. & N. 87, 6 Ware v. Monaghan, 11 T. L. R. 5 Ward v. Ryan, Ir. R. 10 C. L. 17	656 ; 29 529	L. J.	Ex. 32	2;8 \ 	V. R. 1 	310 84 492 164 76
Ward v. Lumley, 5 H. & N. 87, 6 Ware v. Monaghan, 11 T. L. R. 5 Ward v. Ryan, Ir. R. 10 C. L. 17 Ward v. Shew, 9 Bing. 608	656 ; 29 529 	L. J.	Ex. 32	2;8 \ 	V. R. 1 	310 84 492 164 76 253
Ward v. Lumley, 5 H. & N. 87, 6 Ware v. Monaghan, 11 T. L. R. 5 Ward v. Ryan, Ir. R. 10 C. L. 17 Ward v. Shew, 9 Bing. 608 Ward v. Smith, 11 Price, 19	856; 28 529 	L. J.	Ex. 32	2;8 	V. R. 1	310 84 492 164 76 253 115
Ward v. Lumley, 5 H. & N. 87, 6 Ware v. Monaghan, 11 T. L. R. 5 Ward v. Ryan, Ir. R. 10 C. L. 17 Ward v. Shew, 9 Bing. 608 Ward v. Smith, 11 Price, 19 Ward v. Ventom, Peake, Add. Ca	656; 29 as. 126	L. J.	Ex. 32	2;8	W. R. 1	310 84 492 164 76 253 115
Ward v. Lumley, 5 H. & N. 87, 6 Ware v. Monaghan, 11 T. L. R. 5 Ward v. Ryan, Ir. R. 10 C. L. 17 Ward v. Shew, 9 Bing. 608 Ward v. Smith, 11 Price, 19 Ward v. Ventom, Peake, Add. Ca Wardell v. Usher, 3 Sc. N. R. 50	656; 29 529 as. 126 8; 5 Ju	L. J	Ex. 32	2; 8 \ 	W. R. 1	310 84 492 164 76 253 115 313
Ward v. Lumley, 5 H. & N. 87, 6 Ware v. Monaghan, 11 T. L. R. 5 Ward v. Ryan, Ir. R. 10 C. L. 17 Ward v. Shew, 9 Bing. 608 Ward v. Smith, 11 Price, 19 Ward v. Ventom, Peake, Add. Cawardell v. Usher, 3 Sc. N. R. 50 Ware v. Booth, 10 T. L. R. 446	856; 29 529 as. 126 8; 5 Ju	L. J	Ex. 32	2;8	W. R. 1	310 84 492 164 76 253 115 313 519 499
Ward v. Lumley, 5 H. & N. 87, 6 Ware v. Monaghan, 11 T. L. R. 5 Ward v. Ryan, Ir. R. 10 C. L. 17 Ward v. Shew, 9 Bing. 608 Ward v. Smith, 11 Price, 19 Ward v. Ventom, Peake, Add. Ca Wardell v. Usher, 3 Sc. N. R. 50 Ware v. Booth, 10 T. L. R. 446 Waring v. Dewberry, 1 Str. 97	856; 29 529 as. 126 8; 5 Ju	L. J ar. 802	Ex. 32	2;8	W. R. 1	310 84 492 164 76 253 115 313 519 499 320
Ward v. Lumley, 5 H. & N. 87, 6 Ware v. Monaghan, 11 T. L. R. 5 Ward v. Ryan, Ir. R. 10 C. L. 17 Ward v. Shew, 9 Bing. 608 Ward v. Smith, 11 Price, 19 Ward v. Ventom, Peake, Add. Cawardell v. Usher, 3 Sc. N. R. 50 Ware v. Booth, 10 T. L. R. 446 Waring v. Dewberry, 1 Str. 97 Waring v. King, 8 M. & W. 571	856; 28 529 as. 126 8; 5 Ju	L. J	Ex. 32	2;8	W. R. 1	310 84 492 164 76 253 115 313 519 499 320 148
Ward v. Lumley, 5 H. & N. 87, 6 Ware v. Monaghan, 11 T. L. R. 5 Ward v. Ryan, Ir. R. 10 C. L. 17 Ward v. Shew, 9 Bing. 608 Ward v. Smith, 11 Price, 19 Ward v. Ventom, Peake, Add. Ca Wardell v. Usher, 3 Sc. N. R. 50 Ware v. Booth, 10 T. L. R. 446 Waring v. Dewberry, 1 Str. 97 Waring v. King, 8 M. & W. 571 Warman v. Faithfull, 5 B. & A. 1	856; 29 as. 126 8; 5 Ju	r. 802	Ex. 32	2;8	W. R. 1	310 84 492 164 76 253 115 313 519 499 320 148 80
Ward v. Lumley, 5 H. & N. 87, 6 Ware v. Monaghan, 11 T. L. R. 5 Ward v. Ryan, Ir. R. 10 C. L. 17 Ward v. Shew, 9 Bing. 608 Ward v. Smith, 11 Price, 19 Ward v. Ventom, Peake, Add. C. Wardell v. Usher, 3 Sc. N. R. 50 Ware v. Booth, 10 T. L. R. 446 Waring v. Dewberry, 1 Str. 97 Waring v. King, 8 M. & W. 571 Warman v. Faithfull, 5 B. & A. Warner v. Willington, 3 Drew.	856; 28 529 as. 126 8; 5 Ju 1042 523; 5	L. J ar. 802 25 L. J	Ex. 32	2; 8 \	V. R. 1	310 84 492 164 76 253 115 313 519 499 320 148 80 V. S.
Ward v. Lumley, 5 H. & N. 87, 6 Ware v. Monaghan, 11 T. L. R. 5 Ward v. Ryan, Ir. R. 10 C. L. 17 Ward v. Shew, 9 Bing. 608 Ward v. Smith, 11 Price, 19 Ward v. Ventom, Peake, Add. Ca Wardell v. Usher, 3 Sc. N. R. 50 Ware v. Booth, 10 T. L. R. 446 Waring v. Dewberry, 1 Str. 97 Waring v. King, 8 M. & W. 571 Warman v. Faithfull, 5 B. & A. 1 Warner v. Willington, 3 Drew. 433	356; 29 329 38. 126 8; 5 Ju 3042 528; 5	L. J ar. 802 25 L. J	Ex. 32	2;8	V. R. 1 Jur. N	310 84 492 164 76 253 115 313 519 499 320 148 80 V. S. 8, 104, 108
Ward v. Lumley, 5 H. & N. 87, 6 Ware v. Monaghan, 11 T. L. R. 5 Ward v. Ryan, Ir. R. 10 C. L. 17 Ward v. Shew, 9 Bing. 608 Ward v. Smith, 11 Price, 19 Ward v. Ventom, Peake, Add. Cawardell v. Usher, 3 Sc. N. R. 50 Ware v. Booth, 10 T. L. R. 446 Waring v. Dewberry, 1 Str. 97 Waring v. King, 8 M. & W. 571 Warman v. Faithfull, 5 B. & A. 1 Warner v. Willington, 3 Drew. 433 Warren v. Moore, 42 Sol. Journ.	856; 28 529 as. 126 8; 5 Ju 1042 523; 5	L. J ar. 802 25 L. J	Ex. 32	2; 8 \ 	V. R. 1 Jur. N	310 84 492 164 76 253 115 313 519 499 820 148 80 V. S. 8, 104, 108 428
Ward v. Lumley, 5 H. & N. 87, 6 Ware v. Monaghan, 11 T. L. R. 5 Ward v. Ryan, Ir. R. 10 C. L. 17 Ward v. Shew, 9 Bing. 608 Ward v. Smith, 11 Price, 19 Ward v. Ventom, Peake, Add. Ca Wardell v. Usher, 3 Sc. N. R. 50 Ware v. Booth, 10 T. L. R. 446 Waring v. Dewberry, 1 Str. 97 Waring v. King, 8 M. & W. 571 Warman v. Faithfull, 5 B. & A. 1 Warner v. Willington, 3 Drew. 433	356; 29 329 38. 126 8; 5 Ju 1042 523; 2 699 348; 64	L. J. 25 L. J. L. J. (Ex. 32	2; 8 \ 62; 2 2; 71	Jur. N. 103	310 84 492 164 76 253 115 313 519 499 820 148 80 V. S. 8, 104, 108 428
Ward v. Lumley, 5 H. & N. 87, 6 Ware v. Monaghan, 11 T. L. R. 5 Ward v. Ryan, Ir. R. 10 C. L. 17 Ward v. Shew, 9 Bing. 608 Ward v. Smith, 11 Price, 19 Ward v. Ventom, Peake, Add. Cawardell v. Usher, 3 Sc. N. R. 50 Ware v. Booth, 10 T. L. R. 446 Waring v. Dewberry, 1 Str. 97 Waring v. King, 8 M. & W. 571 Warman v. Faithfull, 5 B. & A. 1 Warner v. Willington, 3 Drew. 433 Warren v. Moore, 42 Sol. Journ. Warren v. Murray, '94, 2 Q. B. 6 43 W. R. 3	656; 28 529 as. 126 8; 5 Ju 1042 523; 5 699 48; 64	L. J. 6	Ex. 32	2; 8 \ 2; 71	V. R. 1 Jur. N 108	310 84 492 164 76 253 115 313 519 499 80 V. S. 8, 104, 108 428 458; 571, 573
Ward v. Lumley, 5 H. & N. 87, 6 Ware v. Monaghan, 11 T. L. R. 5 Ward v. Ryan, Ir. R. 10 C. L. 17 Ward v. Shew, 9 Bing. 608 Ward v. Smith, 11 Price, 19 Ward v. Ventom, Peake, Add. Cawardell v. Usher, 3 Sc. N. R. 50 Ware v. Booth, 10 T. L. R. 446 Waring v. Dewberry, 1 Str. 97 Waring v. King, 8 M. & W. 571 Warman v. Faithfull, 5 B. & A. 1 Warner v. Willington, 3 Drew. 433 Warren v. Moore, 42 Sol. Journ. Warren v. Murray, '94, 2 Q. B. 6	356; 29 329 38. 126 8; 5 Ju 1042 523; 5 699 48; 64 is, '03,	L. J. 62 L. J. 62 L. J. 62 Ch.	Ex. 32	2; 8 \ 62; 2 2; 71 72 L.	Jur. N. 103 L. T. J. Ch.	310 84 492 164 76 253 115 313 519 499 80 V. S. 8, 104, 108 428 458; 571, 573
Ward v. Lumley, 5 H. & N. 87, 6 Ware v. Monaghan, 11 T. L. R. 5 Ward v. Ryan, Ir. R. 10 C. L. 17 Ward v. Shew, 9 Bing. 608 Ward v. Smith, 11 Price, 19 Ward v. Ventom, Peake, Add. Cawardell v. Usher, 3 Sc. N. R. 50 Ware v. Booth, 10 T. L. R. 446 Waring v. Dewberry, 1 Str. 97 Waring v. King, 8 M. & W. 571 Warman v. Faithfull, 5 B. & A. 1 Warner v. Willington, 3 Drew. 433 Warren v. Moore, 42 Sol. Journ. Warren v. Murray, '94, 2 Q. B. 6 43 W. R. 3 Warriner, Rc, Brayshaw v. Ninne 88 L. T. 766; 67 J. P. 351; 1 Warwicke v. Noakes, Peake, N.	356; 29 329 38. 126 8; 5 Ju 1042 523; 5 699 48; 64 is, '03, L. G. 1 P. C. 6	L. J. (2 Ch. R. 765;	Ex. 32	2; 8 \ 62; 2 2; 71 72 L.	Jur. N. 103 L. T. J. Ch. 543	310 84 492 164 76 253 115 313 519 499 320 148 80 7. S. 8, 104, 108 428 458; 571, 573 701;
Ward v. Lumley, 5 H. & N. 87, 6 Ware v. Monaghan, 11 T. L. R. 5 Ward v. Ryan, Ir. R. 10 C. L. 17 Ward v. Shew, 9 Bing. 608 Ward v. Smith, 11 Price, 19 Ward v. Ventom, Peake, Add. Cawardell v. Usher, 3 Sc. N. R. 50 Ware v. Booth, 10 T. L. R. 446 Waring v. Dewberry, 1 Str. 97 Waring v. King, 8 M. & W. 571 Warman v. Faithfull, 5 B. & A. 1 Warner v. Willington, 3 Drew. 433 Warren v. Moore, 42 Sol. Journ. Warren v. Murray, '94, 2 Q. B. 6 43 W. R. 3 Warriner, Rc, Brayshaw v. Ninni 88 L. T. 766; 67 J. P. 351; 1 Warwicke v. Noakes, Peake, N. Washborn v. Black, 11 East, 405	556; 29 329 as. 126 8; 5 Ju 1042 523; 5 699 348; 64 is, '03, L. G. 1 P. C. 6 n. (a)	L. J. (2 Ch. R. 765;	Ex. 32	2; 8 \\ 62; 2 2; 71 72 L. L. R. S	Jur. N. 103 L. T. J. Ch.	310 84 492 164 76 253 115 313 519 499 320 148 80 7. S. 8, 104, 108 428 458; 571, 573 701; 392, 394 243 290
Ward v. Lumley, 5 H. & N. 87, 6 Ware v. Monaghan, 11 T. L. R. 5 Ward v. Ryan, Ir. R. 10 C. L. 17 Ward v. Shew, 9 Bing. 608 Ward v. Smith, 11 Price, 19 Ward v. Ventom, Peake, Add. Cawardell v. Usher, 3 Sc. N. R. 50 Ware v. Booth, 10 T. L. R. 446 Waring v. Dewberry, 1 Str. 97 Waring v. King, 8 M. & W. 571 Warman v. Faithfull, 5 B. & A. 1 Warner v. Willington, 3 Drew. 433 Warren v. Moore, 42 Sol. Journ. Warren v. Murray, '94, 2 Q. B. 6 43 W. R. 3 Warriner, Re, Brayshaw v. Ninns 88 L. T. 766; 67 J. P. 351; 1 Warwicke v. Noakes, Peake, N. Washborn v. Black, 11 East, 405 Waterfall v. Penistone, 6 E. &	356; 28 329 as. 126 8; 5 Ju 1042 523; 5 699 48; 64 is, '03, L. G. 1 P. C. 6 n. (a) B. 876	L. J. (2 Ch. R. 765;	Ex. 32	2; 8 \\ 62; 2 2; 71 72 L. L. R. S	Jur. N. 103 L. T. J. Ch.	310 84 492 164 76 253 115 313 519 499 320 148 80 7. S. 8, 104, 108 428 458; 571, 573 701; 392, 394 243 290 Jur.
Ward v. Lumley, 5 H. & N. 87, 6 Ware v. Monaghan, 11 T. L. R. 5 Ward v. Ryan, Ir. R. 10 C. L. 17 Ward v. Shew, 9 Bing. 608 Ward v. Smith, 11 Price, 19 Ward v. Ventom, Peake, Add. Cawardell v. Usher, 3 Sc. N. R. 50 Ware v. Booth, 10 T. L. R. 446 Waring v. Dewberry, 1 Str. 97 Waring v. King, 8 M. & W. 571 Warman v. Faithfull, 5 B. & A. 1 Warner v. Willington, 3 Drew. 433 Warren v. Moore, 42 Sol. Journ. Warren v. Murray, '94, 2 Q. B. 6 43 W. R. 3 Warriner, Rc, Brayshaw v. Ninne 88 L. T. 766; 67 J. P. 351; 1 Warwicke v. Noakes, Peake, N. Washborn v. Black, 11 East, 405 Waterfall v. Penistone, 6 E. & N. S. 15	556; 29 329 38. 126 8; 5 Ju 39. 1042 523; 203, 203, 203, 203, 203, 203, 203, 203,	L. J. (2 Ch. R. 765;	Ex. 32 Ch. 6 2. B. 4 367: 19 T.	2; 8 \\ 62; 2 2; 71 72 L. L. R. S	Jur. N. 103 L. T. J. Ch.	310 84 492 164 76 253 115 313 519 499 320 148 80 I. S. 8, 104, 108 428 458; 571, 573 701; 392, 394 243 290 Jur. 516
Ward v. Lumley, 5 H. & N. 87, 6 Ware v. Monaghan, 11 T. L. R. 5 Ward v. Ryan, Ir. R. 10 C. L. 17 Ward v. Shew, 9 Bing. 608 Ward v. Smith, 11 Price, 19 Ward v. Ventom, Peake, Add. Cowardell v. Usher, 3 Sc. N. R. 50 Ware v. Booth, 10 T. L. R. 446 Waring v. Dewberry, 1 Str. 97 Waring v. King, 8 M. & W. 571 Warman v. Faithfull, 5 B. & A. 1 Warren v. Willington, 3 Drew. 433 Warren v. Moore, 42 Sol. Journ. Warren v. Murray, '94, 2 Q. B. 6 43 W. R. 3 Warriner, Re, Brayshaw v. Ninne 88 L. T. 766; 67 J. P. 351; 1 Warwicke v. Noakes, Peake, N. Washborn v. Black, 11 East, 405 Waterfall v. Penistone, 6 E. & N. S. 15 Watherell v. Howells, 1 Camp. 2	356; 28 329 as. 126 8; 5 Ju 1042 523; 2 699 48; 64 is, '03, L. G. I P. C. 6 n. (a) B. 876	L. J. 6. 2 Ch. R. 765; 26 I	Ex. 32	2; 8 \\ 62; 2 2; 71 72 L. L. R. 8	Jur. N. 103 L. T 100; 3	310 84 492 164 76 253 115 313 519 499 320 148 80 7. S. 8, 104, 108 428 458; 571, 573 701; 392, 394 243 290 Jur 516 349, 519
Ward v. Lumley, 5 H. & N. 87, 6 Ware v. Monaghan, 11 T. L. R. 5 Ward v. Ryan, Ir. R. 10 C. L. 17 Ward v. Shew, 9 Bing. 608 Ward v. Smith, 11 Price, 19 Ward v. Ventom, Peake, Add. C. Wardell v. Usher, 3 Sc. N. R. 50 Ware v. Booth, 10 T. L. R. 446 Waring v. Dewberry, 1 Str. 97 Waring v. King, 8 M. & W. 571 Warman v. Faithfull, 5 B. & A. 1 Warner v. Willington, 3 Drew. 433 Warren v. Moore, 42 Sol. Journ. Warren v. Murray, '94, 2 Q. B. 6 43 W. R. 3 Warriner, Re, Brayshaw v. Ninn 88 L. T. 766; 67 J. P. 351; 1 Warwicke v. Noakes, Peake, N. Washborn v. Black, 11 East, 405 Waterfall v. Penistone, 6 E. & N. S. 15 Watherell v. Howells, 1 Camp. 2 Watkins v. Milton (Overseers of	356; 28 329 as. 126 8; 5 Ju 1042 523; 5 699 48; 64 is, '03, L. G. I P. C. 6 n. (a) B. 876 27 f), L. R	L. J. 6. 2 Ch. R. 765; 26 I	Ex. 32	2; 8 \\ 62; 2 2; 71 72 L. L. R. S	Jur. N. 103 L. T. J. Ch. 643	310 84 492 164 76 253 115 313 519 499 320 148 80 I. S. 8, 104, 108 428 458; 571, 573 701; 392, 394 243 290 Jur. 516 349, 519 73;
Ward v. Lumley, 5 H. & N. 87, 6 Ware v. Monaghan, 11 T. L. R. 5 Ward v. Ryan, Ir. R. 10 C. L. 17 Ward v. Shew, 9 Bing. 608 Ward v. Smith, 11 Price, 19 Ward v. Ventom, Peake, Add. Ca Wardell v. Usher, 3 Sc. N. R. 50 Ware v. Booth, 10 T. L. R. 446 Waring v. Dewberry, 1 Str. 97 Waring v. King, 8 M. & W. 571 Warman v. Faithfull, 5 B. & A. 1 Warner v. Willington, 3 Drew. 433 Warren v. Moore, 42 Sol. Journ. Warren v. Murray, '94, 2 Q. B. 6 43 W. R. 3 Warriner, Rc, Brayshaw v. Ninn 88 L. T. 766; 67 J. P. 351; 1 Warwicke v. Noakes, Peake, N. Washborn v. Black, 11 East, 405 Waterfall v. Penistone, 6 E. & N. S. 15 Watherell v. Howells, 1 Camp. 2 Watkins v. Milton (Overseers of 18 L. T. 601; 16 W. R. 105	356; 28 329 as. 126 8; 5 Ju 1042 523; 5 699 48; 64 is, '03, L. G. I P. C. 6 n. (a) B. 876 27 f), L. R	L. J. 6. 2 Ch. R. 765; 26 I	Ex. 32	2; 8 \\ 62; 2 2; 71 72 L. L. R. 8	Jur. N. 103 L. T. J. Ch. 643	310 84 492 164 76 253 115 313 519 499 320 148 80 7. S. 8, 104, 108 428 458; 571, 573 701; 392, 394 243 290 Jur 516 349, 519 73; 87, 384
Ward v. Lumley, 5 H. & N. 87, 6 Ware v. Monaghan, 11 T. L. R. 5 Ward v. Ryan, Ir. R. 10 C. L. 17 Ward v. Shew, 9 Bing. 608 Ward v. Smith, 11 Price, 19 Ward v. Ventom, Peake, Add. Cawardell v. Usher, 3 Sc. N. R. 50 Ware v. Booth, 10 T. L. R. 446 Waring v. Dewberry, 1 Str. 97 Waring v. King, 8 M. & W. 571 Warman v. Faithfull, 5 B. & A. 1 Warren v. Willington, 3 Drew. 433 Warren v. Moore, 42 Sol. Journ. Warren v. Murray, '94, 2 Q. B. 6 43 W. R. 3 Warriner, Rc, Brayshaw v. Ninni 88 L. T. 766; 67 J. P. 351; 1 Warwicke v. Noakes, Peake, N. Washborn v. Black, 11 East, 405 Waterfall v. Penistone, 6 E. & N. S. 15 Watherell v. Howells, 1 Camp. 2 Watkins v. Milton (Overseers of 18 L. T. 601; 16 W. R. 105 Watkins v. Nash, 20 Eq. 262	356; 28 329 as. 126 8; 5 Ju 1042 523; 2 699 48; 64 is, '03, L. G. I P. C. 6 n. (a) B. 876 27 f), L. B	2 Ch. R. 765; 26 I	Ex. 32	2; 8 \ 62; 2 2; 71 72 L. L. R. !	Jur. N. 108 L. T 100; 3	310 84 492 164 76 253 115 313 519 499 320 148 80 I. S. 8, 104, 108 428 458; 571, 573 701; 392, 394 243 290 Jur. 516 349, 519 73; 87, 384 183
Ward v. Lumley, 5 H. & N. 87, 6 Ware v. Monaghan, 11 T. L. R. 5 Ward v. Ryan, Ir. R. 10 C. L. 17 Ward v. Shew, 9 Bing. 608 Ward v. Smith, 11 Price, 19 Ward v. Ventom, Peake, Add. Cawardell v. Usher, 3 Sc. N. R. 50 Ware v. Booth, 10 T. L. R. 446 Waring v. Dewberry, 1 Str. 97 Waring v. King, 8 M. & W. 571 Warman v. Faithfull, 5 B. & A. 1 Warner v. Willington, 3 Drew. 433 Warren v. Moore, 42 Sol. Journ. Warren v. Murray, '94, 2 Q. B. 6 43 W. R. 3 Warriner, Rc, Brayshaw v. Ninns 88 L. T. 766; 67 J. P. 351; 1 Warwicke v. Noakes, Peake, N. Washborn v. Black, 11 East, 405 Waterfall v. Penistone, 6 E. & N. S. 15 Watherell v. Howells, 1 Camp. 2 Watkins v. Milton (Overseers of 18 L. T. 601; 16 W. R. 105 Watkins v. Nash, 20 Eq. 262 Watkinson v. Man, Cro. Eliz. 34	356; 28 329 as. 126 8; 5 Ju 1042 523; 5 699 48; 64 is, '03, L. G. 1 P. C. 6 n. (a) B. 876 27 f), L. B	25 L. J. 2 Ch. 3, 765; 7 ; 26 I	Ex. 32 Ch. 6 2. B. 4 367: 19 T 3. J. Q. B. 350	2; 8 \\ 62; 2 2; 71 72 L. L. R. 9	Jur. N 103 L. T. J. Ch. 643	310 84 492 164 76 253 115 313 519 499 320 148 80 7. S. 8, 104, 108 428 458; 571, 573 701; 392, 394 243 290 Jur 516 349, 519 73; 87, 384 183 24
Ward v. Lumley, 5 H. & N. 87, 6 Ware v. Monaghan, 11 T. L. R. 5 Ward v. Ryan, Ir. R. 10 C. L. 17 Ward v. Shew, 9 Bing. 608 Ward v. Smith, 11 Price, 19 Ward v. Ventom, Peake, Add. Cawardell v. Usher, 3 Sc. N. R. 50 Ware v. Booth, 10 T. L. R. 446 Waring v. Dewberry, 1 Str. 97 Waring v. King, 8 M. & W. 571 Warman v. Faithfull, 5 B. & A. 1 Warren v. Willington, 3 Drew. 433 Warren v. Moore, 42 Sol. Journ. Warren v. Murray, '94, 2 Q. B. 6 43 W. R. 3 Warriner, Rc, Brayshaw v. Ninni 88 L. T. 766; 67 J. P. 351; 1 Warwicke v. Noakes, Peake, N. Washborn v. Black, 11 East, 405 Waterfall v. Penistone, 6 E. & N. S. 15 Watherell v. Howells, 1 Camp. 2 Watkins v. Milton (Overseers of 18 L. T. 601; 16 W. R. 105 Watkins v. Nash, 20 Eq. 262	356; 28 329 as. 126 8; 5 Ju 1042 523; 5 699 48; 64 is, '03, L. G. 1 P. C. 6 n. (a) B. 876 27 f), L. B	25 L. J. 2 Ch. 3, 765; 7 ; 26 I	Ex. 32	2; 8 \ 62; 2 2; 71 72 L. L. R. !	Jur. N. 108 L. T 100; 3	310 84 492 164 76 253 115 313 519 499 320 148 80 I. S. 8, 104, 108 428 458; 571, 573 701; 392, 394 243 290 Jur. 516 349, 519 73; 87, 384 183

TT . T . 11 T3 P.00	0 T	* 1						AGE
Watson v. Lane, 11 Ex. 769						•••		
Watson v. Main, 3 Esp. 15 Watson v. Waud, 8 Ex. 335	· 22 I		Ex 161	•••	•••	152,		275 948
Watson v. White, 12 T. L. I							•	
Watts v. Kelson, 6 Ch. 166;	40 L.	J. C	h. 126;	24 L.				
338	•••	•••	•••	•••	•••	137,	138,	139
Wauton v. Coppard, '99, 1 C				h. 8;7	79 L.]	•		0.41
W. R. 72 Weak v. Estcourt, 9 Price, 5				•••	•••	•••	357,	361 185
Weakly v. Bucknell, Cowp.			•••		•••	•••	•••	94
Weatherall v. Geering, 12 Vo			•••			•••		420
Weaver v. Sessions, 6 Taunt	. 154	•••	_ • • •	•••	•••	•••	•••	365
Webb v. Austin, 7 M. & Gr.			. J. C. P	. 203	•••	•••		74
Webb v. Fagotti Bros., 79 L			•••	•••	•••	***		439
Webb r. Fordred, 32 J. P. 8 Webb v. Paternoster, 2 Rol.			•••	•••	•••	•••	•••	581 87
Webb v. Plumer, 2 B. & A.			•••	•••		•••	369,	_
Webb v. Rhodes, 3 Bing. N.				•••		•••	•••	188
Webb v. Rorke, 2 Sch. & Le	-		•••	•••	•••	•••	•••	73
Webb v. Russell, 3 T. R. 393		•••	•••	•••	•••	•••	69,	448
Webb v. Earl of Shaftesbury				405 .	 47 T (B 015.	•••	61
Webber v. Lee, 9 Q. B. D. 8 W. R. 866	-					r. 215;		106
Webber v. Stanley, 16 C. B.	N. S.	698	 : 33 L	J. C. P	217	•••	•••	133
Webster v. Southey, 36 Ch.	D. 9;	56 L	. J. Ch.	785;	56 L. T	г. 879;		200
W. R. 622	•••	•••	•••	•••			_	573
Weddell v. Capes, 1 M. & W		•••	•••		•••	•••		487
Weeding v. Weeding, 1 J. &		24	•••	•••	•••	•••	164,	
Week v. Escott, 9 Price, 595		•••	•••	•••	•••	•••	•••	185
Weeks v. Birch, 69 L. T. 75 Weeton v. Woodcock, 7 M.		••• • 4	•••	•••	•••	•••	 526,	77 597
Weigall v. Waters, 6 T. R.			•••	•••	•••	•••	229,	
Welch v. Myers, 4 Camp. 36		•••	•••	•••	•••	•••	,	274
Weld v. Baxter, 11 Ex. 816		& N	. 568; 2	26 L. J	. Ex. 1	12;3 J	ur.	
N. S. 91						•••	•••	77
Weld v. Clayton-le-Moors Un						•••	•••	391
Weller v. Spiers, 26 L. T. 80 Welford v. Beazeley, 3 Atk.					•••	•••	•••	75 107
Wellby v. Still. '95, 1 Ch. 59		_				08	•••	189
Wells, Re, 31 W. R. 764				-		•••	•••	4
Wells v. Attenborough, 24 L		12; 1	9 W. R	. 465	•••	•••	•••	861
Wells v. Kingston-upon-Hu	ıll (Ma	yor c	of), L. R	. 10 C.				
C. P. 257; 32 L. T. 61					•••	•••	22	
Wells v. Moody, 7 C. & P. 5						•••	286,	
Welsh v. Rose, 6 Bing. 638 Werth v. London and Westi				т т.		•••	•••	278 286
Wesley v. Walker, 38 L. T.						•••	109,	_
West v. Blakeway, 2 M. &					P. 17			
630	•••	•••	•••	•••	•••	•••	515,	529
West v. Dobb, L. R. 4 Q. B.								
L. T. 76; 18 W. R. 110			···		-	•	•	
West v. Fritche, 3 Ex. 216; West v. Houghton, 4 C. P.						 878	•••	84 2
West v. Lassels, Cro. Eliz. 8		, 40					238,	
West v. Nibbs, 4 C. B. 172		. J. C	_		•••	•••	298,	
West v. Rogers, 4 T. L. R. 2	229	•••	•••	•••	•••	• • •	•••	505
West Ham v. Fourth City F				2, 1 Q.	B. 654	; 61 L	. J.	
M. C. 128; 66 L. T. 35	0;40	W. I	ζ. 446		*** *^	 T /P 0:	•••	384
West Ham v. Iles, 8 App. C	as. 386	5; 52	1. J. 🕻	ն. թ. ն	DU; 49	L. T. 20	uo;	904
31 W. R. 928 West Ham Central Charity	 Roard	 17 K.a	et Land	 len Wa	terwarl	cs Co	' '00	384
1 Ch. 624; 69 L. J. Ch							349,	351
West London Syndicate v. Co								~ ~ ~
507; 47 W. R. 125	•••	•••	•••	•••	•••	•••	•••	428

	DAGE	•
Westbourne Grove Drapery Co., Re, 5 Ch. D. 248; 44 L. J. Ch. 525	PAGE ;	
86 L. T. 439; 25 W. R. 509	804);	
Westmoreland (Earl of) r. New Sharlston Colliery Co., 48 Sol. Journ		
West of England Fire Insurance Co. v. Isaacs, 12 T. L. R. 466	200 882	
Weston v. Collins, 34 L. J. Ch. 353; 11 Jur. N. S. 190; 12 L. T. 4		•
13 W. R. 510	165	
Weston v. Fidler, 88 L. T. 769	468 R	,
AND LAT M PAN DA TIT TO AND	228	3
	300	
1171 11 65 6 11 4 71 6 75	202 137	
Wharton v. Naylor, 12 Q. B. 673; 17 L. J. Q. B. 278; 12 Jur. 894.	262	
	179)
Wheatley v. Westminster Brymbo Coal Co., 9 Eq. 538; 39 L. J. Ch. 175 22 L. T. 7; 18 W. R. 162 2) ; 07, 209	•
Wheeldon v. Burrows, 12 Ch. D. 31; 48 L. J. Ch. 853; 41 L. T. 327		
	39, 140	_
	68, 225 117	_
Wheeler v. Montefiore, 2 Q. B. 133	192	
Wheeler v. Stevenson, 6 H. & N. 155; 30 L. J. Ex. 46; 3 L. T. 702 9 W. R. 233		,
Wheelwright v. Walker, 23 Ch. D. 752; 52 L. J. Ch. 274; 48 L. T. 70	237):	
31 W. R. 363	44	
	143 36	}
*** T ***	458	3
Whitbread v. Brockurst, 1 Bro. C. C. 404	112	?
	500	_
Whitchurch v. Bevis, 2 Bro. C. C. 559	106 S.	,
948	89	
White v. Binstead, 18 C. B. 304; 22 L. J. C. P. 115; 17 Jur. 394 8 White v. Boby, 26 W. R. 138; 87 L. T. 652	319, 321 122	_
	134	_
White v. Cuyler, 6 T. R. 176	71	Ĺ
	226	
White v. Harrow, 86 L. T. 4; 50 W. R. 259; 18 T. L. R. 129, 228	58, 361	
White v. Hay, 72 L. T. 281 1	10, 423	3
White v. Heywood, 5 T. L. R. 115	282	
	383	
White and Smith's Contract, Re, '96, 1 Ch. 637; 65 L. J. Ch. 481; 7	74	
L. T. 377; 44 W. R. 424	4 27	7
L. T. 273 : 45 W. R. 434 4	35, 4 36	3
White v. Tyndall, 13 App. Cas. 263; 57 L. J. P. C. 114; 58 L. T. 74	11 160)
	344	
White v. Whitewood, 13 T. L. R. 409 1 Whiteacre v. Symonds, 10 East, 13	480	
Whitehead v. Bennett, 27 L. J. Ch. 474; 6 W. R. 351 5	18, 519	•
Whitehead v. Clifford, 5 Taunt. 518	487 140	
The state of the s	140 54, 281	
Whitefield, v. Weedon, 2 Chit. 685	375	5
Whitfield v. Brandwood, 2 Stark. 440 2	30, 3 87	
Whitham v. Kershaw, 16 Q. B. D. 618; 54 L. T. 124; 34 W. R. 340. Whitley Partners, Re, 32 Ch. D. 337; 55 L. J. Ch. 540; 54 L. T. 912	352 2 ;	•
84 W. D. 505	456	,

Whitley v. Roberts, M'Clel. & Y. 10	7			•••	•••		age 256
Whitlock's Case, 8 Rep. 69 b						152,	
Whitlock v. Horton, Cro. Jac. 91 .						63,	
Whitmore v. Humphries, L. R. 7 C.					25 L.	T.	
496; 20 W. R. 79	•••			•	•••	•••	
		•••	•••	•••	•••	224,	284
					•••		
							113
Whiteham a Westminster Brumho	Coals		ka Ca	'0 <i>6</i> 9	 Ch K9	Q ,	910
65 L. J. Ch. 741 : 74 L. T. 804	1: 44 T	W.R.	RO 00., 198	00, 2			202
							316
Whittaker v. Barker, 1 Cr. & M. 113		315					
Whyddon's Case, Cro. Eliz. 520	•••	•••	•••	•••			183
							179
							357
	•						39
						-	
						•	366
							167
					•		347
Whitworth v. Smith, 5 C. & P. 250		157					
	•	W. R.	795	•••			
Wildbor v. Rainforth, 8 B. & C. 4	•				•••	569,	579
	24 L.	J. C.	P. 193				701
						•	
· · · · · · · · · · · · · · · · · · ·							•
Wilkins v. Wood, 17 L. J. Q. B. 31							370
Wilkinson v. Calvert, 8 C. P. D.							
	•••	_	•••				467
Wilkinson v. Cawood, 3 Anst. 905							452
Wilkinson v. Clements, 8 Ch. 96;			-				
W.R. 90				•••	•••	••• 470	116
Wilkinson v. Colley, 5 Burr. 2694 Wilkinson v. Collyer, 13 Q. B. D. 1				 R . K1 T			200
82 W. R. 614	•	-		···		,	890
Wilkinson v. Gaston, 9 Q. B. 137				•••		•••	146
Wilkinson v. Hall, 3 Bing N. C. 50				•••			_
Wilkinson v. Ibbett, 2 F. & F. 300		•••	•••			•••	288
Wilkinson v. Peel, '95, 1 Q. B. 516	; 64 L	. J. Q.	B. 17	8 ; 72 1	. T. 1	51;	
	•••			•••		<u></u>	277
Wilkinson v. Rogers, 2 D. J. & S.							40=
434, 696; 12 W. R. 119, 284		•••				363,	
Wilkinson v. Terry, 1 Moo. & R. 8		•••				*.	278
Wilks v. Back, 2 East, 142 Williams, Ex parte, 7 Ch. D. 138;		 I Rb		 R7 ፐ. ጥ		9R	72
W. R. 274	, z , 14	, v. DK	• 20	o, M.		20	325
Williams v. Bartholomew, 1 B. & I	2. 326	•••	•••	•••	***	78,	
Williams v. Bosanquet, 1 Br. & B.			•••	430	, 432.		
Williams v. Brisco, 22 Ch. D. 441;	48 L.	T. 198	3;31	W. R. 9	907	•••	117
Williams v. Burrell, 1 C. B. 402;						•••	405
Williams v. Cheney, 3 Ves. 59	72 Tr. 9		, .	, , , , , ,			
	•••	•••	•••	•••	•••	• • •	414
Williams v. Earle, L. R. 3 Q. B.	 739; 8	7 L. 3	 J. Q. Э	 B. 281	; 19 L	. T.	
Williams v. Earle, L. R. 3 Q. B. 2 238; 16 W. R. 1041	 739 ; 8	7 L. 3	J. Q.	 B. 281 17	 ; 19 L. 2, 425,	T. 435,	
Williams v. Earle, L. R. 3 Q. B.	 739 ; 8	7 L. 3	J. Q. 3	B. 281 17: 22 L. T	 ; 19 L. 2, 425,	T. 485, 23	

					T	AGE
Williams v. Green, Cro. Eliz. 884	•••	•••	•••	•••		
Williams v. Hayward, 1 E. & E. 1040; 2	28 L. J.	. Q. B.	374; 5	Jur. N	. S.	
1417; 7 W. R. 563 Williams v. Heales, L. R. 9 C. P. 177;	 43 L. J	 r. C. P.	80; 30	D L. T.	220, 20 ;	415
22 W. R. 317	•••	•••	•••		431,	452
Williams v. Holmes, 8 Ex. 861; 22 L. J Williams v. Jenkins, '93, 1 Ch. 700; 62			 8a · 2	 Г. Т 9	249, 51 ·	259
41 W. R. 489			•		•••	47
Williams v. Jenkins, '94, W. N. 176				•••		64
Williams v. Jones, 3 H. & C. 2 ⁷ 6 Williams v. Jones, 11 A. & E. 643	•••			•••		86 315
Williams v. Jones, 36 W. R. 573	•••				•••	121
Williams v. Jordan, 6 Ch. D. 517; 46 L						108
Williams v. Lake, 2 E. & E. 349 Williams v. Lewsey, 8 Bing. 28			•••	•••	•••	108 317
Williams v. Millington, 1 H. Bl. 81		•••			•••	
Williams v. Morris, 8 M. & W. 488			•••		070	303
Williams v. Roberts, 7 Ex. 618; 22 L. J Williams v. Sawyer, 3 Ball & B. 70				•••	272,	
Williams v. Stiven, 9 Q. B. 14; 15 L. J.					247,	
Williams n. Taperell, 87 L. R. 241	•••	•••	•••	•••		569
Williams v. Williams, L. R. 9 C. P. 659 638; 22 W. R. 706					. T.	342
Williamson v. Williamson, 9 Ch. 729;	3 L. J.	. Ch. 7	38; 31	L. T. 2	91	414
Willis, Re, 21 Q. B. D. 384; 57 L. J.	Q. B.	634;	59 L.	Г. 749 ;	36	
W. R. 793 Willis v. Watney, 51 L. J. Ch. 181; 45	T. T	 730 · 30	 N. W. R	494	•••	84 136
Willmott v. Barber, 15 Ch. D. 96; 49 I	J. J. Cl	h. 792;	43 L.	T. 95;	28	100
W. R. 911	•••	•••	•••	•••		425
Willoughby D'Eresby, Ex parte, 44 L. T Willoughby v. Backhouse, 2 B. & C. 821					528, 287,	
Wills v. Stradling, 3 Ves. 378	•••	••••	 	•••	-	113
Willson v. Davenport, 5 C. & P. 531	•••	•••	•••	•••	•••	228
Willson v. Leonard, 3 Beav. 373 Willson v. Love, '96, 1 Q. B. 626	•••	•••	•••	•••	 1 <i>84</i>	432 227
Wilmot r. Rose, 3 E. & B. 563; 23 L. J	. Q. B.	281;				375
Wilmote v. Carn, Cro. Eliz. 19	•••	•••	•••	•••	•••	136
Wilson, Re, 13 Eq. 186; 20 W. R. 363 Wilson Re, 62 L. J. Q. B. 628	•••	•••	• • •	•••	241,	456
Wilson r. Abbott, 3 B. & C. 88	•••	•••	•••	•••	271,	96
Wilson v. Bolton, 10 T. L. R. 17	•••	•••	•••	•••	•••	510
Wilson v. Chisholm, 4 C. & P. 474 Wilson v. Ducket, 2 Mod. 61	•••	•••	•••	•••	•••	80 260
Wilson v. Ducket, 2 Blod. 61 Wilson v. Finch Hatton, 2 Ex. D. 336;			B. 489	; 3 6 L	. T.	200
473; 25 W. R. 537	•••	•••	•••	••••	•••	356
Wilson v. Hart, 1 Ch. 463; 35 L. J. Cl L. T. 499		-		-	14 416.	498
Wilson v. Kearse, Peake, Add. Cas. 196				-	*10,	10
Wilson v. Nightingale, 8 Q. B. 1034; 18	5 L. J.	Q. B. 8	309; 10) Jur9		296
Wilson v. Queen's Club, '91, 3 Ch. 522;	60 L.	J. Ch.	698 ; 6	5 L. T.	42;	67
Wilson v. Smith, 12 M. & W. 401	•••	•••	•••	•••	•••	177
Wilson v. Tavener, '01, 1 Ch. 578; 70 I	J. J. Cl					, 88
Wilson r. Twamley, '04, 2 K. B. 99; 73 90 L. T. 751; 19 T. L. R. 504; 20						364
Wilson r. Wallani, 5 Ex. D. 155; 49 L.	J. Ex	. 437;	42 L.	T. 375	28	004
W. R. 597	•••	•••	•••	•••	455,	456
Wilson v. W. Hartlepool Ry. Co., 2 D. 11 Jur. N. S. 124	J. & S.	475;	34 L. J	. Ch. 2	41;	119
Wilson v. Whateley, 1 J. & H. 436; 30) I. J.	Ch. 67	3:7	Jur. N.	S.	112
908; 8 L. T. 617; 9 W. R. 331		•••	•••	•••	•••	530
Wilson v. Wigg, 10 East, 313 Wilson v. Wilson, 14 C. B. 616; 23 L.		 P 197	 19 T	 Hr KQ1		452
W. R. 421			, 10 d		, 4	380
•••						

						••	
Wilton v. Dunn, 17 Q. B. 294; 21	L.J.	Q. B.	80 : 1	5 Jur. 1	104		AGE 225
Wiltshire v. Cosslett, 5 T. L. R. 4	10	•••	•••	•••	•••	•••	361
Wiltshire v. Cottrell, 1 E. & B. 67				•			
Wimbledon Conservators v. Nicol, Windham's Case, 5 Rep. 7 a						•••	
Windsor's Case, Dean and Chapter	of. 5	 Rep. 24	•••	•••	•••	•••	_
Windsor, Dean of v. Gover, 2 Saur	nd. 302	}	•••	•••	• • •	•••	218
Winn v. Bull, 7 Ch. D. 29; 47 L.	J. Ch.	139;	26 W.	R. 230)	•••	105
Winn v. Ingilby, 5 B. & A. 625 Winn v. White, 2 W. Bl. 840	•••	•••	•••	• • •	•••		
Winter v. Brockwell, 8 East, 308							
Winter v. Dumergue, 12 Jur. N. S	. 726 ;	14 W.	R. 69	9	•••		
Winterbottom v. Ingham, 7 Q. B.	611;	14 L. J	. Q. E	3. 298;	10 Jur.		
Winterbourne v. Morgan, 11 East,						305,	
Wintle v. Freeman, 11 A. & E. 539 Wiscot's Case, 2 Rep. 60 b	y	•••	•••	•••	•••	•••	
Wise v. Perpetual Trustee Co., '03							
L. T. 569; 51 W. R. 241; 19	T. L.	R. 125	•••	•••	•••	•••	
Withers v. Bircham, 3 B. & C. 25							
Witton v. Bye, Cro. Jac. 486 Witty v. Williams, 10 L. T. 457;							220 250
Wix v. Rutson, '99, 1 Q. B. 474;							395
Wollaston v. Hakewill, 3 M. & Gr				. 303	•••	•••	415,
Wallander C. M. 1 15 C. D. OF	•				431,	452,	458
Wollaston v. Stafford, 15 C. B. 27 Wolverhampton, &c., Ry. Co. v.							
L. R. 16 Eq., 433; 43 L. J. (122
Wolveridge v. Steward, 1 Cr. & M	. 644;	3 L. J	Ex.	60	153,	441,	-
Wormersley v. Dally, 26 L. J. Ex.	219					•	584
Wood v. Aylward, 58 L. T. 662 Wood v. Beard, 2 Ex. D. 30; 46 l					 R <i>r</i>	•••	109 150
Wood v. Chivers' Case, 4 Leon. 17					•••	•••	498
Wood v. Clarke, 1 Cr. & J. 484				***	•••	•••	258
Wood v. Cooper, '94, 3 Ch. 671;					Г. 222;	43	040
W. R. 201 Wood v. Copper Miners' Co., 7 C.	R 904	 2 . 10 T	· · · ·	 D 90	••• Q		362 153
Wood v. Davis, 6 L. R. 1r. 50	D. 800	, 10 1	J. U. C	/. I : 45	•••		149
Wood v. Foster's Case, 1 Leon. 42					•••		406
Wood v. Hewett, 8 Q. B. 913; 15	L. J.	Q. B. 2	247; 8	0 Jur.	3 90		514,
Wood v. Lake, 13 M. & W. 848, 1	note (s	\ · Qov	ar 2	•••			529 87
Wood v. Leadbitter, 13 M. & W.	•	, bay		•••	87	, 88,	-
Wood v. Marley, 11 A. & E. 34		•••	•••	•••	***		808
Wood v. Nunn, 5 Bing. 10		•••	•••	•••	•••		286
Wood v. Patteson, 10 Beav. 541		***	•••	•••		58,	
Wood v. Rowcliffe, 6 Ex. 407 Wood v. Silcock, 50 L. T. 251; 3	 2 W. I	R. 845	•••	•••	•••	115.	133 119
Wood v. Tate, 2 B. & P. N. R. 24		•••	•••	•••		2	
Woodcock v. Gibson, 4 B. & C. 46		•••	•••	•••	•••		34
Woodcock v. Nutt, 8 Bing. 170 Woodcock v. Worthington 2 V		•••	•••	•••	•••		491
Woodcock v. Worthington, 2 Y. & Woodcroft v. Thompson, 3 Lev. 4		•••	•••	•••	•••	•••	187 292
Woodhouse v. Jenkins, 9 Bing. 4		•••	•••			•••	404
Woodhouse v. Walker, 5 Q. B. D	. 404;	49 L.	J. Q.	B. 609	; 42 L	. T.	
770; 28 W. R. 765 Woods, Re, 3 Ch. D. 459; 45 L.	T DL	141.6)	P 1000	•••	•••	352
Woods v. Durrant, 16 M. & W. 1	49 : 10	8 L. J.	Ex. 3	18	•••	•••	458 165
Woods v. Hyde, 31 L. J. Ch. 295						•••	165
Woods v. Pope, 1 Bing. N. C. 46	7;6C	. & P.	782	•••	•••	•••	847
	•••		•••		•••	•••	228
Woolcock v. Dew, 1 F. & F. 337 Wooler v. Knott, 1 Ex. D. 265;	45 L.	J. Ex.				24	345
W. R. 1004	*** TI	•••	•••			•••	864
Woollam v. Hearn, 7 Ves. 211	•••	•••		•••	•••	•••	127
L.T.						7	

			PAGE
Woolston v. Ross, '00, 1 Ch. 788; 69 48 W. R. 556; 64 J. P. 264	9 L. J. Ch.		APA APA
Wootley v. Gregory, 2 Y. & J. 536	•••	•••	. 297, 491
Woodon v. Edwin, 12 Rep. 86		•••	
Wordsley Brewery Co. v. Halford, 90 I Worledge v. Benbury, Cro. Jac. 436		•••	• -
Worthington v. Gimson, 2 E. & E. 618	; 29 L. J. Q	B. 116	137
Worthington v. Warrington, 5 C. B. 68	35; 17 L. J.	C. P. 117	179
Wotton v. Hele, 2 Wms. Saund. 178, n. Wren v. Stokes, '02, 1 Ir. R. 167	iote (3)	•••	399 320
Wrenford v. Gyles, Cro. Eliz. 643	•••	•••	. 100, 148
Wride v. Dyer, '00, 1 Q. B. 23; 69 I			
W. R. 73; 64 J. P. 118; 16 T. L. Wright v. Burroughes. 3 C. B. 685; 16			
Wright v. Cartwright, 1 Burr. 282; 1	Ld. Ken. 529	•••	100, 101, 148
Wright v. Lawson, '03, W. N. 108;		4; 19 T. L.	R. 203,
	 h KKQ . 95 T	 Т 19	339
Wright v. Burroughes, 3 C. B. 685; 16 L. J. C. P. 6; 12 Jur. 968 Wright v. Cartwright, 1 Burr. 282; 1 Ld. Ken. 529 100, 101, Wright v. Colls, 8 C. B. 150; 19 L. J. C. P. 60; 13 Jur. 1056 Wright v. Dewes, 1 A. & E. 641 Wright v. Goddard, 8 A. & E. 144 Wright v. Lawson, '03, W. N. 108; 68 J. P. 34; 19 T. L. R. 203, 510 Wright v. Pitt, 12 Eq. 408; 40 L. J. Ch. 558; 25 L. T. 13 36, 59, Wright v. Smith, 5 Esp. 203 Wright v. Stavert, 2 E. & E. 721; 29 L. J. Q. B. 164; 6 Jur. N. S. 867; 8 W. R. 413 Wright v. Tracey, Ir. R. 7 C. L. 134; 8 Ibid. 478 93, Wright v. Trezevant, 1 Moo. & M. 231			
Wright v. Stavert, 2 E. & E. 721; 29	L. J. Q. B.	164; 6 Ju	r. N. S.
Wright a Tracey Ir R 7 C I. 194	9 <i>Thid A7</i> 9	•••	106
Wright v. Trezevant, 1 Moo. & M. 231	0 10111. 410	•••	80
Wrottesley v. Adams, Plowd. 187; Dy		35	. 133, 146
	•••		. 95, 97
Wylson v. Dunn, 34 Ch. D. 569; 56	L. J. Ch. 855		
W. R. 405	•••	•••	107
	•••		. 143, 519 . 11, 12
Wynne, Re, Finch v. Wynne-Finch, 48			129
Wynne v. Lord Newborough, 1 Ves. 16			72
X, Re, '94, 2 Ch. 415	•••	•••	11
			,
Yates v. Dunster, 11 Ex. 15; 24 L. J. Yates v. Eastwood, 6 Ex. 805; 20 L. J.	Ex. 226 I Ex 303	•••	337 306
Yates v. Ratledge, 5 H. & N. 249; 29	L. J. Ex. 117	7 317,	318, 319, 820
Yates v. Tearle, 6 Q. B. 282; 12 L. J.			
Yaw v. Leman, 1 Wils. 21 Yellowly v. Gower, 11 Ex. 274; 24 L.			
Yeoman v. Ellison, L. R. 2 C. P. 68			
65	•••	•••	247
Young v. Ashley Gardens Properties, '0 88 L. T. 541			
Young v. Brompton Waterworks Co., 1	B. & S. 675	•••	311
Young v. Holmes, 1 Str. 70	***		451
Young v. Raincock, 7 C. B. 310; 18 L.			
Young v. Spencer, 10 B. & C. 145	•••	*** **	358
Zaffert, Re, 1 Morr. 72			458
Zimbler v. Abrahams, '03, 1 K. B. 577			
46; 51 W. R. 343 Zouch v. Parsons, 3 Burr. 1794	•••	•••	6, 8, 489
Zouch v. Willingdale, 1 H. Bl. 311	•••	•••	479

TABLE OF STATUTES.

[Where there is no short title to a statute, a descriptive title has been inserted.]

	een inse	erted.	-,	, c, ip c			
		٠,				1	PAGE
						•••	64
51 Hen. 3, stat. 4 (Ruffhead);	See Stat	utes R	evised,	I. 74	(Statute	s of	
uncertain date) (Distress)	•••	•••					293
52 Hen. 8 (Statute of Marlbridge	e)—						
c. 4	•••	•••	•••	•••	•••	286,	292
		•••	•••	•••	•••	•••	
		_ •••	•••	•••	•••		
		· I.)	•••	•••	•••		
		•••	•••	•••	•••	-	
			•••	•••	•••		28
		c. 46	•••	•••	•••		64
		•••	•••	••	•••		
			•••	•••	•••		569
			•••	•••	•••		569
· · · · · · · · · · · · · · · · · ·	_ •			•••	•••		190
			2, 4	•••	•••		
		-	•••	•••		•	
Deen inserted.] PAC							
			_	•••	•••		445
	_	ı kent	••	•••			254
		0 0			•••		24
		2, 3	•••	•••	•••	•••	8
							292
_							307
							25
12 Kliz a 10 (Realesiantical Lea	88. 1 , U	2					
							25
	, .						569
							25
							8
		b), bb.	-				186
		Cestui					483
			_	-			
9.1	•						124
s. 2	•••	•••	•••	•••	•••		
s. 3	•••	•••	•••	•••		486,	
8. 4	•••	•••	•••		105, 107,		
2 Will. & M. sess. 1, c. 5 (Sale o				-	298, 300,		
s. 1		•••	•••	•••	•••	•••	295
s. 2	•••	•••	•••	•••	•••	804,	
s. 3	•••	•••	•••	•••	•••		291
s. 4	•••	•••	•••	•••	•••	•••	294
s. 5	•••	•••	•••	•••	•••	•••	813
8 & 9 Will. c. 11 (Auction for Po	_		•••	•••	•••	•••	168
1 Anne, c. 1 (Crown Lands Act,			•••	•••	•••	•••	31
	,,				<i>a</i> 2	}	

								P	AGE
4 Anne, c. 16 (in §		-			•	nt of Re	versio		
s. y s. 1			•••			•••	994	226,	444
6 Anne, c. 18 (in		 Avisad.			 Gue V	ie Act.	•	•	222
•	1, 2, 3		-		-	_	•••	•••	488
7 Anne, c. 12 (D		rivileg				•••	•••	•••	266
•	iddlesex Re	-	Act, 17	708)	•••	•••	185,	429,	
	18							٠٠٠	429
8 Anne, c. 14 (in 8 s. 1							17	316,	
s. 2		•••		•••	•••	•••	•••	010,	271
	6, 7	•••			•••	•••		276,	_
2 Geo. 2, c. 25 (I					•••	•••	•••	•••	54
4 Geo. 2, c. 28 (I	andlord an	d Tens	int Act	, 1730)	•••	290	, 502,	510,	
	1	•••	•••	•••	•••	•••	•••	•••	566
	. 2	_	•••	•••	•••	•••	•••	•••	479
	5 6	•••	•••	•••	•••	•••	•••	250,	261 493
11 Geo. 2, c. 19				_	•••	•••	•••	240,	
	s. 1	•••	•••	•••	•••	•••	•••	271,	_
	s. 2	•••	•••	•••	•••	•••	•••	•••	271
	s. 3	•••	•••	•••	•••	•••	•••	•••	272
	8. 4	•••	•••	•••	•••	•••	•••	•••	273
	8. 5 ···	•••	•••	•••	•••	***	•••	•••	273 272
	s. 7 s. 8	•••	•••	•••	•••	•••	260,	271.	
	D. U	•••	•••	•••	•••	•••	200,	300,	_ 1
	s. 9	•••	•••	•••	•••	•••	292,		
	s. 10	•••	•••	•••	•••	•••	•••	289,	
	s. 11	•••	•••	•••	•••	•••	•••	•••	.83
	s. 14	•••	•••	•••	•••	•••	•••	380,	
	s. 15	•••	•••	•••	•••	•••	•••	 570	254
	s. 16 s. 17	•••	•••	•••	•••	•••	•••	579 ,	582
	s. 18	•••	•••	•••	•••	•••	•••	•••	568
	s. 19	•••	•••	•••	•••	•••	•••	•••	815
	88. 20, 21	•••	•••	•••	•••	•••	•••	•••	316
	s. 23	•••	•••	•••	•••	•••	•••	•••	309
5 Geo. 3, c. 17 (I	_		•	•	•••	•••	•••	•••	2
	. l (Inclosure /		79\ a		•••	•••	•••	•••	25
18 Geo. 3, c. 81 (14 Geo. 3, c. 78 (ct 172	74)	•••	••• 4	435
	8. 41	•••		•••	•••	•••	•••	•••	383
	s. 83		•••	•••	•••	•••	•••	•••	382
	s. 86		•••	•••	•••	•••	•••	•••	383
25 Geo. 3, c. 77						35)	•••	•••	354
38 Geo. 3, c. 5 (I		-		=		•••	•••	•••	230
c. 87, 39 & 40 Geo. 3, c	88. 6, 7		 I Leese			•••	•••	•••	60 25
42 Geo. 8, c. 116							•••	•••	231
48 Geo. 8, c. 78				•	•••	•••	•••	•••	32
	(Probate a			_		_	•••	•••	178
52 Geo. 3, c. 161	(Duchy of	Lancas	ster)	•••	•••	•••	•••	•••	32
55 Geo. 3, c. 184	• _ •		-	•••	•••	•••	•••	•••	281
KR Class O - EA	8.8 (Sala of Far		 Stook A		 R\	•••	•••	•••	176
56 Geo. 3, c. 50 ((Sale of Far B. 1					•••	•••	263,	303 373
		•••	•••	•••	•••	•••	•••	200,	374
		•••	•••	•••	•••	•••	•••	262,	
	в. 6	•••	•••	•••	•••	•••	•••	•••	263
	s. 7		•••	•••	•••	•••	•••	•••	369
	8. 11	••• ••••	 -4- 4-4	1017\	•••	•••	•••	•••	374
57 Geo. 3, c. 52 (•••	•••	•••	581
с. уз ((Distress (C	rusus) A	LCU, 101		•••	•••	•••	•••	807

57 Geo. 3, c. 93 (Distress (C	Inetel	Act 18	171				PAGE	Í
s. 1	-			•••	•••		306	
8. 2				•••	•••	•••	307	
Schedule	· · · ·	•••	• • •	•••	•••	•••	300	ı
59 Geo. 3, c. 12 (Poor Relie								
ss. 12, 13	•••	•••		•••	•••	•••	34	
s. 17 s. 19			•••	•••	•••	•••	34, 256	
88. 24, 25				•••	•••	•••	384 579	
1 Geo. 4, c. 87 (Recovery of	_					•••	575	
1 & 2 Geo. 4, c. 52 (Duchy					•••	•••	32	
3 Geo. 4, c. 126 (Turnpike					•••	•••	126	,
10 Geo. 4, c. 44 (Metropolit				9), s. 4	•••	•••	276, 314	
c. 50 (Crown La			•				01 00	
				•••	•••	•••	-	
					•••			
					•••			
				•••	•••	•••	331	
11 Geo. 4 & 1 Will. 4, c. 68	5 (Infa	nts' Pr	operty	Act, 1	380)	•••	5, 5, 14	;
			•••	•••	•••	•••	9, 17	
\$8. 22—31								
	_						•	
						•••	5	
1 & 2 Will, 4, c. 32 (Game			1	•••	•••	• • •	0	
	-	•	•••		•••		407	
	•		•••	• • •			407, 408	
	•••		•••	•••	•••	•••	407, 408	
c. 42 (Poor 1	Relief.	Act, 18	-	2	• • •	•••	34	
c. 58 (Interp			•••	01	•••	•••	318	
2 & 3 Will. 4, c. 1 (Crown c. 42 (Allotn				. 21	•••	••• ,	31 34	
c. 71 (Prescr		•	,	•••	•••	•••	34	
3 & 4 Will. 4, c. 27 (Real F						•••	432	
s. 7	•••	•••	•••	•••	•••	• • •	570	
s. 8	•••	•••	•••	•••	•••	•••	571	
s. 9	•••	•••	•••	•••	•••	•••	573	
s. 14	•••	•••	•••	• • •	•••	•••	574	
s. 24 s. 34	•••	•••	•••	•••	•••	•••	573	
s. 42	•••	• • •	•••	•••	•••	•••	278, 325,	
				•	•••	•••	331, 332	
c. 42 (Civil l	Proced	ure Act	, 1833	S)—				
š. 3	•••	•••	•••	•••	•••	• • •	331, 332	
ss. 4, <i>l</i>		•••	•••	•••	•••	•••	332	
s. 28		•••	•••	•••	• • •	•••	331	
ss. 37, c. 74 (Fines		 ecoveri	es Act	1893)	•••	•••	254, 255 14, 15, 18	
ss. 15,			•••	, 1000)	•••	•••	40	
s. 40	•••	•••	•••	•••	•••	•••	18, 40	
s. 41	•••	•••	• • •	•••	•••	•••	40	
	•••	•••	•••		•••	•••	16	
4 & 5 Will. 4, c. 22 (Appor			•	•	۲۱	04 00	240	
5 & 6 Will. 4, c. 76 (Munic						y 4 , y6	32	1
6 & 7 Will. 4, c. 20 (Eccles 8, 1	rasuuti	it Ticsibb	a Aut,	1000)-	-		29, 30	J
s. 4		•••	•••	•••	•••	•••	30	
c. 64 (Eccles	iastics	l Lease	s (Am		it) Act		29	
c. 71 (Tithe	Act, 1	836)	•••	•••	•••	••••	232, 240)
š. 70	•••	•••	•••	•••	•••	•••	232, 233	
	 or	•••	•••	• • •	•••	•••	232	
ss. 81, c. 104 (Mun		Cornora	···	 a 9	•••	•••	288 32	
c. ros furum	rethar ,	Oor Links	mons)	5. <i>L</i>	•••	•••	32	l

1 Wish a 60 MW.L. Ast 1	007\ -	0						PAGE
1 Vict. c. 69 (Tithe Act, 1						•••		233 32
1 & 2 Vict. c. 43 (Dean Fo c. 74 (Small T						•••	578,	
C. / T (DMAIL I	опоцион	to Troce	roly z	100, 100	,0,,	•••		581
s. 1		•••			•••	•••	-	579
s. 2				•••	•••	•••	•••	
c. 95 (Pension						•••		31
c. 106`(Plurali								
s. 28	•••	•••	•••	•••	•••	•••	•••	30
s. 59								29
2 & 3 Vict. c. 47 (Metropo								276
c. 71 (Metropo								314
3 & 4 Vict. c. 77 (Gramma								578
c. 84 (Metropo							•••	
4 & 5 Vict. c. 38 (School 8							 27, 28	
5 & 6 Vict. c. 27 (Ecclesia c. 35 (Income				24), 55.	1, 10,	10	61, 20	, 25
s. 60		•	,	• • •	_	_	• • •	229
ss. 73, 10					•••	•••	•••	000
c. 45 (Copyrig					•••			385
c. 97 (Limitati								294
s. 2	•••	•••	•••	•••	•••	•••		316
c. 108 (Ecclesi	astical :	Leasing	Act,	1842)	•••			3, 29
s. 1	• • •	•••	•••	•••	•••		28,	181
ss. 2, 3			•••	•••	•••	•••		28
8. 4			•••	•••	• • •	•••		181
ss. 5—9			•••	•••	•••	•••	•••	
s. 18 ss. 20——			•••	•••	•••	• • •	•••	28
6 & 7 Vict. c 30 (Pound-b				 1	•••		•••	28 295
c. 40 (Hosiery					•••	***	•••	265
7 & 8 Vict. c. 37 (School 8					•••	•••	•••	240
c. 65 (Duchy of					•••	•••	•••	178
c. 66 (Aliens),				•••	•••	•••	•••	21
c. 96 (Execution	on Act,	1844),	s. 67	•••	•••	•••	•••	321
8 & 9 Vict. c. 18 (Lands (Clauses	Acts, 1	845)	•••	•••	•••	•••	421
s. 68		•••	•••	•••		•••	•••	447
s. 119		•••	•••	•••	•••	•••	•••	240
s. 121	•••	•••		•••	•••	•••		3, 99
c. 99 (Crown I				-	•••	•••	•••	31
c. 106 (Real Pr				•••	•••	• • •	 191	125
s. 2 s. 3				•••	•••	6, 124,	131,	_
s. 5				•••	•••	···	420,	169
s. 6				•••	•••	•••	•••	169
s. 9	• • •	•••	•••	•••	•••	250,		
c. 118 (Inclosu	re Act,	1845),	s. 111	•••	•••	•••	578,	
c. 124 (Leases	Act, 18	45)	•••	•••	•••	•••	•••	131
9 & 10 Vict. c. 74 (Baths a	ınd Wa	sh-hous	es Act	, 1846)	, s. 24	•••	•••	33
c. 95 (County	Courts	Act, 1	846), s	. 58	•••	•••	•••	577
8. 96		71			4.4	•••	•••	265
10 & 11 Vict. c. 17 (Water	works (Clauses	Act, 1	847), 8	. 44	•••	•••	266
c. 15 (Gaswo	orks Cla	uses Ac	T, 184	1), 8. 1	4	•••		266
11 & 12 Vict. c. 48 (Summ								580 5.7
12 & 13 Vict. c. 26 (Leases s. 2		u zo j		•••	•••	•••		5, 57 5, 57
ss. 3, 4	. 5. 7	•••	•••	•••	•••	•••	JU	57
c. 49 (Schoo	•				•••	•••	•••	240
c. 92 (Cruelt						•••	•••	293
13 & 14 Vict. c. 17 (Lease:	Act. 1	850)—	,	// 20	- •	. 	- 	-
s. 2	•••	•••	•••	•••	•••	•••	•••	57
s. 3	•••	•••	•••	•••	•••	•••	•••	56
14 & 15 Vict. c. 25 (Landle	ord and	Tenan	t Act,	1851)	•••	•••	-	240
s. 1	•••	•••	•••	•••	•••	254,	531,	53 8

								P	AGE
14 & 15 Vict.		ord and	Tenan i	t Act, 1	851)—	-			
	s. 2	•••	•••	•••	•••	•••	•••	262,	
	s. 3 c. 42 (Crown	n Tanda /	 Aat 19	 251\	•••	•••	•••	•••	522
	8. 2		10		•••	•••			178
	s. 6	•••	•••	•••	•••	•••	•••	•••	31
	c. 99 (Evide	nce Act,	1851),		•••	•••	•••	•••	188
	c. 104 (Epis						351), s.	9	29
15 & 16 Vict.					•	,	•••	•••	31
	c. 62 (Crown c. 76 (Comm						•••	•••	31
	8. 209	TOH TWW	11000	inte Vi			•••	•••	576
	s. 210		•••	•••	•••	4	97 , 49 8,		
	s. 211	•••	•••	•••	•••	•••	•••	•••	510
	A	, 214	•••	•••	• • •	•••	•••	•••	574
10 L 17 Win	c. 79 (Inclos				•••	•••	•••	•••	579
16 & 17 Vict.	c. 54 (1ncon s. 35		•	•					230
	s. 36	•••	•••	•••	•••	•••	•••	•••	229
		•••	•••	•••	•••	•••	•••	•••	229
	c. 56 (Crow)	n Lands	Act, 18	353), s.	6	•••	•••	•••	31
	c. 137 (Char	itable Tr	usts A	ct, 185	3	•••	• • •	•••	35
TT' +		, 26, 48,		•••		•••	•••	••	37
17 & 18 Vict.						•••	•••	•••	240
18 & 19 Vict.	c. 60 (Cruel						4 • •	389,	293 300
10 to 10 vict.	C. 120 (Met.	оронски	aranaf	Zemenr	ACU, .	(000)	***	•	395
	ss. 73	, 105	•••	•••	•••	•••		•••	231
	s. 85	•••	•••	•••	•••	•••	•••	•••	391
	c. 122 (Meti	•		_	-	5)	•••	•••	383
	c. 124 (Char		usts A	ct, 185	5)—				07
	s. 15 s. 16	•••	•••	•••	•••	•••	• • •	•••	37 37
	s. 29	•••	•••	•••	•••	•••	•••	•••	37
	s. 38		•••	•••	•••	•••	•••	•••	38
	s. 39	•••	•••	•••	•••	•••	•••	•••	38
	- -	•••	•••	•••	•••	•••	•••	•••	37
	8. 48		•••	• • •	•••	•••	• • •	•••	38
10 to On Viet	8. 49	 meila Tas	· · · ·	···	• • • • • • • • • • • • • • • • • • •	1054\	• · · ·	•••	37 250
19 & 20 Vict.	c. 108 (Cou						, s. <i>u</i>	•••	577
	c. 120 (Sett						•••	24	1, 41
20 & 21 Vict.							•••	•••	548
	c. 81 (Buris	l Act, 18	57), s.	24	•••	•••	•••	•••	37
21 & 2 Vict.								•••	121
	c. 44 (Unive			•		•	8)	•••	30
	c. 57 (Eccle s. 1			•	1000)	_		98	3, 29
	s. 4	•••	•••	•••	•••	•••	•••	240	28
	s. 9	•••	•••	•••	•••	•••	•••	•••	29
	c. 73 (Stipe	ndiary M	agistr	ates Ac	t, 185	8), s. 1	•••	•••	273
	c. 95 (Cour						• • •	6(0, 62
22 & 23 Vict.	•	of Proper	ty Am	endme	nt Act	, 1859)			400
	s. 1	•••	•••	•••	•••	•••	•••	•••	426 426
	s. 2 s. 3	••	•••	•••	•••	•••	•••	•••	449
	ss. 4—	-в .	•••	•••	•••	•••	•••	···	510
	s. 12	•••	•••	•••	•••	•••	• • •	57 ,	183
	s. 21	•••	•••	• • •	•••	•••	• • •	•••	429
	8. 27	•••				. 44	•••	•••	454
23 & 24 Vict	1_	_		_ •			···	•••	381
	c. 38 (Law c. 59 (Univ							•••	503 30
	c. 124 (Ecc							•••	29
	1200		_ 			-, -00	- /		

00 A 04 TT	10	a (O	•	m					P	AGE
23 & 24 Vict.	c. 12	• _	on Lav	v Proce	dure A	.ct, 186	0)—			K1A
		s. 1 s. 2	•••	•••	•••	•••	•••	•••	•••	510 510
	c. 18	6 (Charit						•••	•••	579
		54 (Land		_	•	, -			ct.	0,0
					•••				155,	240
24 & 25 Vict.	c. 10						•••	•••	•••	323
	c. 21	(Revenu	e (No.	1) Act	, 1861)	•••	•••	•••	•••	71
	4.0	8. 2	_	_	•••	•••	- • •	•••	•••	360
	c. 40	(Forest		•						90
		s. 6 s. 22		•••		•••	•••	•••	•••	32 177
	c 10	s. 22 5 (Ecclesi	 estical	Leage	 R Act	 1861\	•••	•••	•••	29
		5 (Paroch					•••	•••	•••	33
		3 (Land 1					••	•••	•••	231
25 & 26 Vict.							•••	•••	•••	31
	c. 52	(Ecclesia	stical !	Lenses	Act, 18	362)	•••	•••	•••	29
	c. 89	(Compan		-	•					
		88. 18, 2		•••		•••	•••	•••	•••	36
		88. 84, 8		•••		:	•••	•••	•••	326
		88. 95, 1 8. 147	ออ	•••	•••	•••	•••	• • •	•••	73 32 6
		s. 147			•••		•••	326.	327,	
	c. 10	2 (Metroj								
	J. 10	s. 96	• • •	•••	-	•••		•••	, oo 1,	
26 & 27 Vict.	c. 49		f Corn), ss. 21		32
	c. 93	(Waterw	orks C	lauses	Act, 18	363), s.	14	•••	•••	266
	c. 10	6 (Charit	y Land	ls Act,	1863)	•••	•••	•••	•••	39
07 4 00 771 1		5 (Statute				•				267
27 & 28 Vict.								- 10		229
		(Admira)					1804),	8. 12	70	-
29 & 30 Vict.		2 (Judgm				•••	•••	•••	70,	466
20 G 00 V 100.		ss. 7, 8						•••	•••	31
		s. 10						•••	•••	178
	c. 81	(Ecclesia							•••	28
30 & 31 Vict		7 .			-		•	•	•••	271
		2 (Repres		_			•	•	•••	384
01 4 00 771 /		6 (Poor I							•••	33
31 & 32 Vict.									•••	32
		4 (Eccles								29
39 & 32 Vict		8 (Public								30
32 & 33 Vict.	U. 11	8s. 1, 2,						•		384
	c. 70	(Contagi								383
	_	(Bankru			•	•	-			
		s. 23	•••	•••	•••	•••	•••	•••	456,	
00 571		0 (Charit								
33 Vict. c. 1						•••	•••	***	•••	21
33 & 34 Vict.	c. 23	· _		•	,				n n	101
		8. 6	•••	•••		•••	•••		21,	401 21
		s. 8 s. 9	•••			•••	•••	•••	21,	
		s. 9 s. 10			•••	•••			21,	
		s. 10 s. 12		•••	•••	•••	•••	•••	21,	
				•••				•••	•	
		ss. 18, 2			•••	•••	•••	•••	•••	21
		s. 30	•••	•••		•••	•••	•••	•••	21
	c. 35	(Apporti			1870)	•••	•••	•••	•••	463
		8. 2	···	•••	•••	•••	•••	•••	•••	240
	~ nr	ss. 3, 4,					 eg 10	 90 09	•••	241
		(Elemen (Married								33 16, 16
		(Stamp 2			operty	AUL, 1	•	•••		178
	U, 01	(comp	ially 10		•••	•••	•••	***	•••	## (J

TABLE OF STATUTES.

										•		υ	AGE
33	& 34	Vict.	c.	104	4 (Joint	Stock	Compa	anies A	rrange	ement	Act, 1		AUE
					s. 2	•••	•••	•••	•••	•••	•••	•••	36
34	& 35	Vict.			Lunacy					-		•••	11
					(Trade U (Gaswor					•••	• • •		36 266
					(Lodger						•••	•••	200
			•		s. 1	•••		•••	•	• - ,	234	, 268,	299
					s. 2	•••	•••	•••	•••	•••	•••	•••	268
					8. 3			•••			•••	234,	
25	1 34	Vict	c 2		s. 4 (Elemen		 Incetic		Amana		Act 19	···	268
00	a. 00	7 100.	U. Z		s. 1				Amon	TITICH C		••••	33
			c. E	60	(Railway	y Rollin	g Sto	ck Prot	tection				266
		774 .			(Parish							•••	
35	& 37	Vict.			(Crown] (Crown					•••	•••	•••	31 31
					(Judicat						83, 397	432	
			.		s. 12					•••	•••	,,	62
					s. 16			•••	•••	•••	1	6, 62,	122
					s. 24 (7)					•••	•••		122
					s. 25 s. 76	•••	•••	• • •	•••	•••		, 484,	122
37	& 38	Vict.	c. 4		Buildin					•••	•••	•••	122
					s. 34	•••	•••	•••	-,	• • •	•••	•••	116
					s. 37	•••	•••	•••		•••	•••	•••	36
					(Licensi:					•••	•••	•••	363
					(Rating (Real Pr				 ct 187	74). g. '	1	•••	383 279,
			· ·	•	(10001 1 1	opoloj			, 20,	1 /5 0.		, 432,	
					(Infants					•••		7, 8	, 10
			c. 7	'8 ((Vendor	and Pri	mahaaa		10741			113,	157
					•			•	10/4)		•••	-	
			α (s. 2	•••	•••	•••	•••	•••	•••	•••	427
38	& 39	Vict.		96	s. 2 (Statute	Law R	 evisior	 1 Act, 1	 1874 (1	 No. 2))	•••	427 28
38	& 39	Vict.)6 55 (s. 2 (Statute (Public) s. 4	Law R	 evisior	 1 Act, 1	 1874 (1	 No. 2))	•••	427 28 396 231
38	& 39	Vict.		96 55 (s. 2 (Statute (Public) s. 4 s. 6	Law R Health	 evisior Act, 1 	 n Act, 1 .875)	1874 (I 	No. 2) 3	 36, 394 	 , 395, 	427 28 396 231 34
38	& 39	Vict.		96 55 (s. 2 (Statute (Public) s. 4 s. 6 ss. 27, 2	Law R Health 29, 51	 evisior Act, 1 	Act, 1 875)	 1874 (1 	No. 2) 8) 36, 394 	 , 395, 	427 28 396 231 34 33
38	& 39	Vict.		96 55 (s. 2 (Statute (Public : s. 4 s. 6 ss. 27, 2 s. 94	 Law R Health 29, 51	evisior Act, 1	 n Act, 1 .875)	1874 (I 	No. 2) 8) 36, 394 	 , 395, 	427 28 396 231 34 33 393
38	& 39	Vict.		96 55 (s. 2 (Statute (Public : s. 4 s. 6 ss. 27, 2 s. 94 s. 104 s. 150	Law R Health 29, 51	 evisior Act, 1 	Act, 1 875)	1874 (I	No. 2) 8) 36, 394 	, 395, , 388,	427 28 396 231 34 33 393 386
38	& 39	Vict.		96 55 (s. 2 (Statute (Public) s. 4 s. 6 ss. 27, 2 s. 94 s. 104 s. 150 ss. 175,	Law R Health 29, 51 	evisior Act, 1	Act, 1 .875)	1874 (I	No. 2) 3 2: 2:) 36, 394 31, 232	, 395, , 383, , 391,	427 28 396 231 34 33 393 386 395 33
38	& 39	Vict.		96 : 55 (s. 2 (Statute (Public) s. 4 s. 6 ss. 27, 2 s. 94 s. 104 s. 150 ss. 175, s. 211	Law R Health 29, 51 	evisior Act, 1	Act, 1 875)	1874 (I	No. 2) 8 2: 2:) 36, 394 31, 232 31, 390	, 395, , 383, , 391,	427 28 396 231 34 33 393 386 395 33 385
38	& 39	Vict.		96 55 1	s. 2 (Statute (Public s. 4 s. 6 ss. 27, 2 s. 94 s. 104 s. 150 ss. 175, s. 211 s. 214	Law R Health 177	evisior Act, 1	Act, 1 .875) 	1874 (I	No. 2) 8 2: 2:	36, 394 31, 232 31, 390	, 395, , 383, , 391, 231,	427 28 396 231 34 33 393 385 395 385 385
38	& 3 9	Vict.	c. 5	96 : : : : : : : : : : : : : : : : : : :	s. 2 (Statute (Public s. 4 s. 6 ss. 27, 2 s. 94 s. 104 s. 150 ss. 175, s. 211 s. 214 s. 226 s. 257	Law R Health 29, 51 177	evisior Act, 1	Act, 1 875)	1874 (I	No. 2) 8 2: 2:) 36, 394 31, 232 31, 390	, 395, , 383, , 391,	427 28 396 231 34 33 393 386 395 385 386 395
38	& 39	Vict.	c. 6	96 : : : : : : : : : : : : : : : : : : :	s. 2 (Statute (Public) s. 4 s. 6 ss. 27, 2 s. 94 s. 104 s. 150 ss. 175, s. 211 s. 214 s. 226 s. 257 (Statute	Law R Health 29, 51 177 Law R	evision Act, 1	n Act, 1 875)	1874 (I	No. 2) 3 2. 2: 2) 36, 394 31, 232 31, 390	, 395, , 383, , 391, 231, 231,	427 28 396 231 34 33 393 386 395 385 385 385 386
38	& 39	Vict.	c. 6	36 (377 (s. 2 (Statute (Public s. 4 s. 6 ss. 27, 2 s. 94 s. 104 s. 150 ss. 175, s. 211 s. 214 s. 226 s. 257 (Statute (Judicat	Law R Health 29, 51 177 Law R ure Act	evision Act, 1	n Act, 1 875) 	1874 (I	No. 2) 3 2. 2: 2) 36, 394 31, 232 31, 390	, 395, , 383, , 391, 231, 231,	427 28 396 231 34 33 393 386 395 385 386 395 266
38	& 39	Vict.	c. 6	36 (177 (13)	s. 2 (Statute (Public) s. 4 s. 6 ss. 27, 2 s. 94 s. 104 s. 150 ss. 175, s. 211 s. 214 s. 226 s. 257 (Statute (Judicat	Law R Health 29, 51 177 Law R ure Act	evision Act, 1	Act, 1 875)	1874 (I	No. 2) 3 2: 2: 2: 2:) 36, 394 31, 232 31, 390	, 395, , 383, , 391, 231, 231,	427 28 396 231 34 33 393 386 395 386 395 266
38	& 39	Vict.	c. 6 c. 7	36 (377 (s. 2 (Statute (Public s. 4 s. 6 ss. 27, 2 s. 94 s. 104 s. 150 ss. 175, s. 211 s. 214 s. 226 s. 257 (Statute (Judicat	Law R Health 29, 51 177 Law R ure Act	evision Act, 1	n Act, 1 875)	1874 (I	No. 2) 3 2. 2: 2) 36, 394 31, 232 31, 390	, 395, , 383, , 391, 231, 231,	427 28 396 231 34 33 393 386 395 385 386 395 266
38	& 39	Vict.	c. 6 c. 7	36 (377 (s. 2 (Statute (Public) s. 4 s. 6 ss. 27, 2 s. 94 s. 104 s. 150 ss. 175, s. 211 s. 214 s. 226 s. 257 (Statute (Judicat s. 10 s. 11 (Land T ss. 11, 1	Law R Health 29, 51 177 Law R ure Act ransfer	evision Act, 1	Act, 1 875)	1874 (I	No. 2) 3 2: 2: 2: 2:	36, 394 31, 232 31, 390	383, 395, 383, 391, 231, 231, 186, 186,	427 28 396 231 34 33 393 386 395 385 385 386 395 266 430 430
38	& 39	Vict.	c. 6 c. 7	36 (37 (37 (s. 2 (Statute (Public) s. 4 s. 6 ss. 27, 2 s. 94 s. 104 s. 150 ss. 175, s. 211 s. 214 s. 226 s. 257 (Statute (Judicat s. 10 s. 11 (Land T ss. 11, 1 ss. 18, 3	Law R Health 19, 51 177 Law R ure Act ransfer 3 4, 35, 3	evision Act, 1	Act, 1 875) A Act, 1 9— 875)	1874 (1	No. 2) 3 2: 2: 2: 2:) 36, 394 31, 232 31, 390 	383, 383, 391, 231, 231, 	427 28 396 231 34 33 393 386 395 385 385 385 386 395 266 430 430 430
			c. 6 c. 7	36 (377 (37 (37 (s. 2 (Statute (Public) s. 4 s. 6 ss. 27, 2 s. 94 s. 104 s. 150 ss. 175, s. 211 s. 214 s. 226 s. 257 (Statute (Judicat s. 10 s. 11 (Land T ss. 11, 1 ss. 18, 3 (Agricul	Law R Health 19, 51 177 Law R ure Act ransfer 3 4, 35, 3 tural H	evision Act, 1 	Act, 1 875) Act, 1 875) 50 gs Act,	1874 (I 1875)	No. 2) 3 2: 2: 2:) 36, 394 31, 232 31, 390 	383, 395, 383, 391, 231, 231, 231,	427 28 396 231 34 33 386 395 385 385 386 395 266 430 430 187 536
			c. 6 c. 7	36 (177 (187 (188 (188 (188 (188 (188 (188	s. 2 (Statute (Public) s. 4 s. 6 ss. 27, 2 s. 94 s. 104 s. 150 ss. 175, s. 211 s. 214 s. 226 s. 257 (Statute (Judicat s. 10 s. 11 (Land T ss. 11, 1 ss. 18, 3	Law R Health 19, 51 177 Law R ure Act ransfer 3 4, 35, 3 tural H	evision Act, 1 	Act, 1 875) Act, 1 875) 50 gs Act,	1874 (I 1875)	No. 2) 3 2: 2: 2:) 36, 394 31, 232 31, 390 	395, , 395, , 383, 391, , 231, 231, , 186, 186, , 186,	427 28 396 231 34 33 393 386 395 385 385 386 395 266 430 430 430 187 536 197
			c. 6 c. 7	36 (177 (187 (188 (188 (188 (188 (188 (188	s. 2 (Statute (Public) s. 4 s. 6 ss. 27, 2 s. 94 s. 104 s. 150 ss. 175, s. 211 s. 214 s. 226 s. 257 (Statute (Judicat s. 10 s. 11 (Land T ss. 11, 1 ss. 18, 3 (Agricul (Settled) s. 2	Law R Health 19, 51 177 Law R ure Act ransfer 3 4, 35, 3 tural H	evision Act, 1 Act, 1 Act, 1 	Act, 1 875) Act, 1 375) 50 gs Act, 1 1877)	1874 (I 1875) 1875) 3, 5	No. 2) 3 2: 2: 2: 2 2 3.	36, 394 31, 232 31, 390 4, 46, 4	383, 383, 391, 231, 231, 231, 	427 28 396 231 34 33 393 386 395 385 385 386 395 266 430 430 430 430 187 536 197 ,50
			c. 6 c. 7	36 (377 (37 (38 (s. 2 (Statute (Public) s. 4 s. 6 ss. 27, 2 s. 94 s. 104 s. 150 ss. 175, s. 211 s. 226 s. 257 (Statute (Judicat s. 10 s. 11 (Land T ss. 11, 1 ss. 18, 3 (Agricul (Settled) s. 2 s. 4 s. 6	Law R Health 19, 51 177 Law R ure Act ransfer 3 4, 35, 3 tural F Estates	evision Act, 1	Act, 1 875) Act, 1 375) 50 gs Act, 1 1877)	1874 (I 1875) 1875) 3, 5	No. 2) 3 2: 2: 2: 2 2 3.	36, 394 31, 232 31, 390 4, 46, 4	383, 395, 383, 391, 231, 231, 231, 231, 	427 28 396 231 34 33 386 395 385 385 386 395 266 430 430 187 536 197 50 181
			c. 6 c. 7	36 (17) 37 (18) 38 (18)	s. 2 (Statute (Public) s. 4 s. 6 ss. 27, 2 s. 94 s. 104 s. 150 ss. 175, s. 211 s. 226 s. 257 (Statute (Judicat s. 10 s. 11 (Land T ss. 11, 1 ss. 18, 3 (Agricul (Settled s. 2 s. 4 s. 6 s. 7	Law R Health 19, 51 Law R ure Act ransfer 3 4, 35, 3 tural E Estates	evision Act, 1 Act, 1 Act, 1 	Act, 1 875) Act, 1 375) 50 gs Act, 1 1877)	1874 (I 1875) 1875) 3, 5	No. 2) 3 2: 2: 2: 2 2 3.	36, 394 31, 232 31, 390 4, 46, 4	383, 383, 391, 231, 231, 231, 	427 28 396 231 34 33 386 395 385 386 395 266 430 430 430 187 50 181 50 50
			c. 6 c. 7	36 (177 (187 (188 (188 (188 (188 (188 (188	s. 2 (Statute (Public) s. 4 s. 6 ss. 27, 2 s. 94 s. 104 s. 150 ss. 175, s. 211 s. 226 s. 257 (Statute (Judicat s. 10 s. 11 (Land T ss. 11, 1 ss. 18, 3 (Agricul (Settled) s. 2 s. 4 s. 6	Law R Health 19, 51 177 Law R ure Act ransfer 3 4, 35, 3 tural F Estates	evision Act, 1	Act, 1 875) Act, 1 375) 50 gs Act, 1 1877)	1874 (I 1875) 1875) 3, 5	No. 2) 3 2: 2: 2: 2 2 3.	36, 394 31, 232 31, 390 4, 46, 4	383, 395, 383, 391, 231, 231, 231, 231, 	427 28 396 231 34 33 393 386 395 385 386 395 266 430 430 430 187 536 197 50 181
			c. 6 c. 7	36 (1) (1) (1) (1) (1) (1) (1) (1) (1) (1)	s. 2 (Statute (Public) s. 4 s. 6 ss. 27, 2 s. 94 s. 104 s. 150 ss. 175, s. 211 s. 226 s. 257 (Statute (Judicat s. 10 s. 11 (Land T ss. 11, 1 ss. 18, 3 (Agricul (Settled s. 2 s. 4 s. 6 s. 7 s. 8 s. 9 s. 10—	Law R Health 19, 51 177 Law R ure Act ransfer 3 4, 35, 3 tural E Estates	evision Act, 1	Act, 1 875) Act, 1 375) 50 gs Act, 1 1877)	1874 (I 1875) 1875) 3, 5	No. 2) 3 2: 2: 2: 2 2 3.) 36, 394 31, 232 31, 390 4, 46, 4	383, 395, 383, 391, 231, 231, 231, 231, 	427 28 396 231 33 396 395 385 385 386 395 386 395 386 395 430 430 430 430 430 430 430 430 430 430
			c. 6 c. 7	36 (17 (18) 2 (18) 3 (18) 4	s. 2 (Statute (Public) s. 4 s. 6 ss. 27, 2 s. 94 s. 104 s. 150 ss. 175, s. 211 s. 226 s. 257 (Statute (Judicat) s. 11 (Land T) ss. 11, 1 ss. 18, 3 (Agricul) (Settled) s. 2 s. 6 s. 7 s. 8 s. 9 ss. 10— ss. 10— ss. 10— ss. 10— ss. 10— ss. 10—	Law R Health 19, 51 177 Law R ure Act ransfer 3 4, 35, 3 tural E Estates	evision Act, 1	Act, 1 875) Act, 1 375) 50 gs Act, 1 1877)	1874 (I	No. 2) 3 2: 2: 2: 2 2 3.	36, 394 31, 232 31, 390 4, 46, 4	383, 383, 391, 231, 231, 231, 231, 	427 28 396 231 33 393 386 395 385 386 395 266 326 430 430 430 430 430 430 430 430 430 430
			c. 6 c. 7	36 (1) (1) (1) (1) (1) (1) (1) (1) (1) (1)	s. 2 (Statute (Public) s. 4 s. 6 ss. 27, 2 s. 94 s. 104 s. 150 ss. 175, s. 211 s. 226 s. 257 (Statute (Judicat s. 10 s. 11 (Land T ss. 11, 1 ss. 18, 3 (Agricul (Settled s. 2 s. 4 s. 6 s. 7 s. 8 s. 9 s. 10—	Law R Health 19, 51 177 Law R ure Act ransfer 3 4, 35, 3 tural E Estates	evision Act, 1	Act, 1 875) Act, 1 375) 50 gs Act, 1 1877)	1874 (I	No. 2) 3 2: 2: 2: 2 2 3.	36, 394 31, 232 31, 390 4, 46, 4	383, 383, 391, 231, 231, 231, 231, 	427 28 396 231 33 396 395 385 385 386 395 386 395 386 395 430 430 430 430 430 430 430 430 430 430

AU AT AL VICT	. 4	م (۵-44)	مــــــــــــــــــــــــــــــــــــ	A	10771				P.	AGE
70 G 71 1100	. C. 1	88. 39-	ed Estai -41	tes Act	, 15//)					50
		s. 44	***	•••	•••	•••	•••	•••	•••	50
		s. 46	•••	•••	• • •	•••	•••	13, 16,	17, 41	
		8. 47	•••	•••	• • •	•••	•••	•••	17	•
		8. 48	•••	•••	•••	•••	•••	•••		, 50
		8. 49 88. 50-	50	•••	•••	•••	•••	•••	5	
		88. 50- 8. 56	- 52	•••	•••	•••	•••	•••	•••	18 5 0
		s. 57	•••	•••	•••	•••	•••	•••	18	, 48
41 & 42 Vict.	. c. 3					•••	•••		249,	
		s. 4	•••	•••	•••	•••	•••	•••	•••	270
40 4 40 771 4	-	8.6		•••					211,	
42 & 43 Vict									•••	852
43 & 44 Vict.								-	406,	80
	U. 4	88. 1,	nd Game	e Act,	1000)	•••	•••	•••	409,	
		ss. 3,	-		•••	•••	•••	•••	••••	
		s. 8	•••	•••	•••	•••	•••	•••	•••	408
44 & 45 Vict.	. c. 4					•••	•••	•••	•••	445
		s. 2	•••	•••	•••	•••	•••	5	, 138,	_
		s. 3	•••	•••	•••	•••	•••	•••	•••	427
		8. 6	• • •	•••	•••	•••	•••	•••	138,	
		8. 8	•••	•••	•••	•••	67	 IKO 1 <i>8</i> 1	170	182
		s. 10	•••	•••	•••	20.	07,	152, 161, 252, 448,	-	
		s. 11	•••	•••		•••	•••		448.	
		s. 12	•••	•••	•••	•••	•••	•••	166,	
		s. 13	•••	•••	•••	•••	•••	•••	•••	114
		s. 14	•••	•••	•••	157,		212, 214,		
						_	_	508, 509	, ,	
		s. 18	•••	•••	•••	60	•	181, 225	, 252,	_
		8. 24	•••	• • •	•••	***	•••	•••	•••	258
		s. 30 s. 40	•••	•••	•••	***	• • •	•••	•••	62
			• • •							- 7 11
		9.41	444	•••	•••	•••	•••	•••	•••	
		s. 41 s. 46	•••	•••	•••	•••	•••	•••	•••	5
		8. 41 8. 46 8. 47								5 72
		s. 46 s. 47 s. 50	•••	•••	•••	•••	•••	•••	•••	72 224 429
		s. 46 s. 47 s. 50 s. 60	•••	•••	•••	•••	•••	•••	•••	72 224 429 161
		s. 46 s. 47 s. 50 s. 60 s. 67	•••	•••	•••	•••	•••	•••		72 224 429 161 507
	. 4	8. 46 8. 47 8. 50 8. 60 8. 67 8. 70	 (1) (2)	•••	•••	•••	•••	•••	•••	72 224 429 161 507 50
		s. 46 s. 47 s. 50 s. 60 s. 67 s. 70	 (1) (2) eitors' R	emune	ration	 Act, 18	81)	•••		5 72 224 429 161 507 50 189
45 & 46 Vict	c. 5	s. 46 s. 47 s. 50 s. 60 s. 67 s. 70 4 (Solid	 (1) (2) eitors' R y Act, 1	 emune [881),	ration	Act, 18	81)		•••	5 72 224 429 161 507 50 189
45 & 46 Vict	c. 5 . c. 3	s. 46 s. 47 s. 50 s. 60 s. 67 s. 70 4 (Solid 8 (Arm 60 (Bath	 (1) (2) eitors' R y Act, I	emune 1881),	ration A	Act, 188	81) 			72 224 429 161 507 50 189 3
45 & 46 Vict	c. 5 . c. 3	s. 46 s. 47 s. 50 s. 60 s. 67 s. 70 4 (Solid 8 (Arm 60 (Bath	 (1) (2) eitors' R y Act, I	emune 1881),	ration A	Act, 188	81) 	 3 11, 14, 5		5 72 224 429 161 507 50 189 3 83
45 & 46 Vict	c. 5 . c. 3	s. 46 s. 47 s. 50 s. 60 s. 67 s. 70 4 (Solid 8 (Arm 60 (Bath 88 (Settl	 (1) (2) eitors' R y Act, I as and V led Land	emune 1881),	ration A	Act, 188	81) 	 3 11, 14, 5	3, 65, , 161,	5 72 224 429 161 507 50 189 3 83 69, 430
45 & 46 Vict	c. 5 . c. 3	s. 46 s. 47 s. 50 s. 60 s. 67 s. 70 4 (Solid 8 (Arm 60 (Bath 88 (Settl s. 2 ((1) (2) citors' R y Act, 1 as and V led Land	emune 1881), (Vash-hed Act,	ration A	Act, 188	81) 	 3 11, 14, 5	3, 65, , 161,	5 72 224 429 161 507 50 189 3 3, 69, 430 41
45 & 46 Vict	c. 5 . c. 3	s. 46 s. 47 s. 50 s. 60 s. 67 s. 70 4 (Solid 8 (Arm 60 (Bath 88 (Settl s. 2 (s. 2 (s. 2 ((1) (2) citors' R y Act, 1 led Land (1) (3)	emune 1881), Vash-hed Act,	ration s. 141 ouses A 1882)	Act, 188	81) 2), s. 3, 4,	3 11, 14, 5	3, 65, , 161,	5 72 224 429 161 507 50 189 3 83 69, 430 41 41
45 & 46 Vict	c. 5 . c. 3	s. 46 s. 47 s. 50 s. 60 s. 67 s. 70 4 (Solid 8 (Arm 60 (Bath 88 (Settl s. 2 (s. 2 (s. 2 (s. 2 ((1) (2) citors' R y Act, 1 as and V led Land (1) (3) (5)	emune 1881), a Vash-had Act,	ration s. 141 ouses A 1882)	Act, 188	81)	3 11, 14, 5	3, 65, , 161,	5 72 224 429 161 507 50 189 3 3, 69, 430 41 41 41 41
45 & 46 Vict	c. 5 . c. 3	s. 46 s. 47 s. 50 s. 60 s. 67 s. 70 4 (Solid 8 (Arm 50 (Bath 88 (Settl s. 2 (s. 2 (s. 2 (s. 2 (s. 2 ((1) (2) eitors' R y Act, I as and V led Lane 1) 3) 5) 6)	emune 1881), Vash-hed Act,	ration s. 141 ouses A 1882)	Act, 188	81) 2), s. 3, 4,	3 11, 14, 5	3, 65, , 161,	5 72 224 429 161 507 50 189 3 83 69, 430 41 41 41 41
45 & 46 Vict	c. 5 . c. 3	s. 46 s. 47 s. 50 s. 60 s. 67 s. 70 4 (Solid 8 (Arm 60 (Bath 88 (Settl s. 2 (s. 2 (s. 2 (s. 2 (s. 2 ((1) (2) eitors' R y Act, 1 as and V led Land (1) (5) (6) (7)	emune 1881), o Vash-ho d Act,	ration s. 141 ouses A 1882)	Act, 188	81)	3 11, 14, 5	3, 65, , 161,	5 72 224 429 161 507 50 189 3 3, 69, 430 41 41 41 41 41
45 & 46 Vict	c. 5 . c. 3	s. 46 s. 47 s. 50 s. 60 s. 67 s. 70 4 (Solid 8 (Arm 60 (Bath 88 (Settl s. 2 (s. 2 (s. 2 (s. 2 (s. 2 (s. 2 ((1) (2) eitors' R y Act, I as and V led Lane 1) 3) 5) 6)	emune 1881), Vash-hed Act,	ration s. 141 ouses A 1882)	Act, 188	81) 2), s. 3, 4,	3 11, 14, 5 101	3, 65, , 161, 4	5 72 224 429 161 507 50 189 3 83 69, 430 41 41 41 41 44 3, 46
45 & 46 Vict	c. 5 . c. 3	s. 46 s. 47 s. 50 s. 60 s. 67 s. 70 4 (Solid 8 (Arm 50 (Bath 88 (Sett) s. 2 (s. 2 (s. 2 (s. 2 (s. 2 (s. 2 ((1) (2) eitors' R y Act, I as and V led Land (1) (5) (6) (7) (8)	emune 1881), o Vash-ho d Act,	ration s. 141 ouses A 1882)	Act, 188	81)	3 11, 14, 5 101	3, 65, , 161, 4	5 72 224 429 161 507 50 189 3 3 69, 430 41 41 41 44 41 44 3, 46
45 & 46 Vict	c. 5 . c. 3	s. 46 s. 47 s. 50 s. 60 s. 67 s. 70 4 (Solid 8 (Arm 60 (Bath 88 (Settl s. 2 (s. 6 s. 7 s. 8	 (1) (2) eitors' R y Act, I as and V led Land (1) (5) (6) (7) (8)	emune 1881), o Vash-ho d Act,	ration s. 141 ouses A 1882)	Act, 188	81)	3 11, 14, 5 101 41, 42, 181	3, 65, , 161, 4, 43, , 194,	5 72 224 429 161 507 50 189 3 3 69, 430 41 41 41 41 41 41 41 41 41 41 41 41 41
45 & 46 Vict	c. 5 . c. 3	s. 46 s. 47 s. 50 s. 60 s. 67 s. 70 4 (Solid 8 (Arm 60 (Bath 88 (Settl s. 2 (s. 2 (s	 (1) (2) eitors' R y Act, I as and V led Land (1) (5) (6) (7) (8)	emune 1881), o Vash-ho d Act,	ration s. 141 ouses A 1882)	Act, 188	81)	3 11, 14, 5 101 41, 42, 181	3, 65, , 161, , 194, , 194,	5 72 224 429 161 507 50 189 3 83 69, 430 41 41 41 41 41 41 43, 46 43, 46 44 45 46 47 47 48 48 48 48 48 48 48 48 48 48 48 48 48
45 & 46 Vict	c. 5 . c. 3	s. 46 s. 47 s. 50 s. 60 s. 67 s. 70 4 (Solid 8 (Arm 60 (Bath 88 (Settl s. 2 (s. 6 s. 7 s. 7 s. 7 s. 7 s. 10	 (1) (2) eitors' R y Act, I as and V led Land (1) (5) (6) (7) (8)	emune 1881), o Vash-ho d Act,	ration s. 141 ouses A 1882)	Act, 188	81)	3 11, 14, 5 101 41, 42, 181 194, 46	3, 65, , 161, , 194, , 194, , 195,	5 72 224 429 161 507 50 189 3 3 69, 430 41 41 41 41 41 41 41 41 41 41 41 41 41
45 & 46 Vict	c. 5 . c. 3	s. 46 s. 47 s. 50 s. 60 s. 67 s. 70 4 (Solid 8 (Arm 60 (Bath 88 (Settl s. 2 (s. 2 (s	 (1) (2) eitors' R y Act, I as and V led Land (1) (5) (6) (7) (8)	emune 1881), o Vash-ho d Act,	ration s. 141 ouses A 1882)	Act, 188	81) 2), 8. 3, 4,	3 11, 14, 5 101 41 42, 181 194 46 195, 197	3, 65, , 161, , 194, , 194, , 195, , 195,	5 72 224 429 161 507 50 189 3 83 69, 430 41 41 41 41 41 41 41 41 557 46 41 41 41 41 41 41 41 41 41 41 41 41 41
45 & 46 Vict	c. 5 . c. 3	s. 46 s. 47 s. 50 s. 60 s. 67 s. 70 4 (Solid 8 (Arm 80 (Bath 88 (Settl s. 2 (s. 10 s. 11 s. 12	 (1) (2) eitors' R y Act, I as and V led Land (1) (5) (6) (7) (8)	emune 1881), o Vash-ho d Act,	ration s. 141 ouses A 1882)	Act, 188	81) 2), s. 3, 4,	3 11, 14, 5 101 41 42, 181 194 46 195, 197	3, 65, , 161, , 194, , 194, , 195, , 195, , 198,	5 72 224 429 161 507 50 189 3 3 69, 430 41 41 41 41 41 41 41 41 41 41 41 41 41
45 & 46 Vict	c. 5 . c. 3	8. 46 8. 47 8. 50 8. 60 8. 67 8. (Solid 8 (Settl) 8. 2 (8. 2	 (1) (2) eitors' R y Act, I as and V led Land (1) (5) (6) (7) (8)	emune 1881), o Vash-ho d Act,	ration s. 141 ouses A 1882)	Act, 188	81) 2), 8. 3, 4,	3 11, 14, 5 101 41 42, 181 194 46 195, 197	3, 65, , 161, , 194, , 194, , 195, , 195, , 198,	5 72 224 429 161 507 50 189 3 83 69, 430 41 41 41 41 41 41 41 41 41 41 41 41 41
45 & 46 Vict	c. 5 . c. 3	s. 46 s. 47 s. 50 s. 60 s. 67 s. 70 4 (Solid 8 (Arm 80 (Bath 88 (Settl s. 2 (s. 10 s. 11 s. 12	(1) (2) citors' R y Act, 1 s and V led Lane (1) (5) (6) (7) (8) (10)	emune 1881), o Vash-ho d Act,	ration s. 141 ouses A 1882)	Act, 188	81) 2), s. 3, 4,	3 11, 14, 5 101 41 42, 181 194 46 195, 197	3, 65, , 161, , 194, , 194, , 195, , 195, , 198,	5 72 224 429 161 507 50 189 3 3 69, 430 41 41 41 41 41 41 41 41 41 41 41 41 41

45 to 40 Win	- 00	/C-441-3	T 1	A . A . •	0001			PAGE
45 & 46 Vict.	c. 38	s. 17		_	882)—			104 107
		s. 18	•••	•••	•••	•••	•••	196, 197
		s. 20	•••	•••	•••	•••	•••	41, 42
		s. 21	•••	•••	•••	•••	•••	42, 190, 555
		s. 22	•••	•••	•••	•••	•••	555
		s. 25	•••	•••	•••	•••	•••	42
		s. 26	•••	•••	•••	•••	•••	555
		s. 31	, 95	•••	•••	• • •	•••	45, 555
		ss. 32— s. 36	3 3	•••	•••	•••	•••	555
		s. 87	•••	•••	•••	•••	•••	555
		s. 38	•••	•••	•••	•••	•••	44, 557
		s. 42	•••	•••	•••	•••	•••	44
		8. 44	•••	•••	•••	•••	•••	44
		8. 45	•••	•••	•••	•••	• • •	5, 13, 44, 45
		s. 50 (3)		•••	•••	•••	•••	69, 70
		ss. 53, 5 s. 56		•••	•••	•••	•••	42, 43, 194
		s. 57	•••	•••	•••	•••	•••	4, 45, 48
		s. 58	•••	•••		•••	•••	4, 41, 47, 101
		s. 59	•••	•••	•••	•••	•••	4, 13
		s. 60	•••	•••	•••	•••	•••	4, 5, 13
		s. 61	•••	•••	•••	•••	•••	17
		s. 62	•••	•••	•••	•••	•••	12, 13
	. 90	s. 68	••••	A 04	1000\	•••	•••	45, 47, 48
	U. 08	(Conveys		Act,	1002)-	-		114
		s. 4	•••	•••	•••	•••	•••	427
		8. 7	•••	•••	•••	•••	•••	16
		s. 10	•••	•••	•••	•••	•••	47
		(Bills of				•••	•••	84, 249, 251
	c. 50	(Munici	_	_	ions Ac	et, 1882	2)—	00
		s. 6 s. 108	•••	•••	•••	•••	•••	32 32
	•	ss. 109—	 -110	•••	•••	•••	•••	33
		s. 111		•••	•••	•••	•••	32
•	c. 56	(Electric	Light	ing A	ct, 188			266
		(Married						14
		8. 1	•••	•••	•••	• • •	•••	15, 20, 254
		8. 2	• • •	•••	•••	•••	•••	15, 254
		s. 5 s. 19	•••	•••	•••	•••	•••	16, 255 255
		s. 24	•••	•••	•••	•••	•••	20
	c. 80	(Allotm						04 90
		•		WACTION.	,	1002)		34, 39
		8. 12	•••	•••	•••	•••	•••	578
46 & 47 Vict.		(Munici		 rporati	ions Ac	 t, 1883), s. 8	578 39
	c. 49	(Munici) (Statute	Law]	 rporati Revisio	ions Acon Act,	t, 1883 1883)), s. 8 	578 39 121
	c. 49	(Munici) (Statute (Bankru	Law]	 rporati Revisio	ions Acon Act,	 t, 1883), s. 8 	578 39 121 323, 375
	c. 49	(Munici) (Statute (Bankru s. 80	Law laptcy A	rporati Revisionati Act, 18	ions Acon Act,	t, 1883 1883)), s. 8 	578 39 121 323, 375 443
	c. 49	(Municip (Statute (Bankrus, 80 s. 42	Law I	rporati Revision Act, 18	ions Ac on Act, 88)	et, 1883 1883)), s. 8 	578 39 121 823, 375 443 324, 325
	c. 49	(Munici) (Statute (Bankru s. 80	Law laptcy A	rporati Revisionati Act, 18	ions Acon Act,	t, 1883 1883)), s. 8 	578 39 121 323, 375 443
	c. 49	(Municip (Statute (Bankrus. 30 s. 42 s. 43 s. 44 s. 54	Law]	rporati Revision Act, 18	ions Ac on Act, 88)	et, 1883 1883)), s. 8 	578 39 121 323, 375 443 324, 325 324 73 73, 454
	c. 49	(Munici) (Statute (Bankrus, 80 s. 42 s. 42 s. 44 s. 54 s. 55	Law I	rporati Revision Act, 18	ions Ac on Act, 88)	et, 1883 1883)), s. 8 	578 39 121 823, 375 443 324, 325 324 73 73, 454 454—461, 528
	c. 49	(Municip (Statute (Bankrus. 80 s. 42 s. 43 s. 44 s. 54 s. 55 s. 56	Law I	rporati Revision Act, 18	ions Ac on Act, 88)	et, 1883 1883)), s. 8 	578 39 121 323, 375 443 324, 325 324 73 73, 454 454—461, 528 73
	c. 49	(Munici) (Statute (Bankrus, 30 s. 42 s. 42 s. 42 s. 44 s. 54 s. 55 s. 56 s. 82	Law I	rporati Revision Act, 18	ions Act, 883)	et, 1883 1883)), s. 8 	578 39 121 823, 375 443 324, 325 324 73 73, 454 454—461, 528 73 73
	c. 49	(Municip (Statute (Bankrus, 80 s. 42 s. 43 s. 44 s. 54 s. 55 s. 56 s. 56 s. 82 s. 121	Law I	rporati Revision Act, 18	ions Act, 883)	t, 1883 1883)), s. 8 	578 39 121 323, 375 443 324, 325 324 73 73, 454 454—461, 528 73 455 455
	c. 49	(Munici) (Statute (Bankrus, 30 s. 42 s. 42 s. 42 s. 44 s. 54 s. 55 s. 56 s. 82	Law 1 125	rporati Revision Act, 18	ions Act, 883)	et, 1883 1883)), s. 8 	578 39 121 823, 375 443 324, 325 324 73 73, 454 454—461, 528 73 73
	c. 49 c. 52	(Munici) (Statute (Bankrus, 30 s. 42 s. 42 s. 43 s. 44 s. 54 s. 55 s. 56 s. 56 s. 82 s. 121 ss. 122,	Law] ptcy A 125	rporati Revision Act, 18	ions Act, 883)	et, 1883 1883)), s. 8 	578 39 121 323, 375 443 324, 325 324 73 73, 454 454—461, 528 73 455 455 458 325 454
	c. 49 c. 52	(Munici) (Statute (Bankrus. 30 s. 42 s. 42 s. 43 s. 44 s. 54 s. 55 s. 56 s. 56 s. 121 ss. 122, s. 168 (Agriculation 314	Law Inter A	rporati Revision Act, 18	ions Acon Act, (83)	st, 1883 1883) gland)), s. 8 Act, 18	578 39 121 323, 375 443 324, 325 324 73 73, 454 73 454 455 458 458 325 454 325 454 325 454 3279, 457
	c. 49 c. 52	(Munici) (Statute (Bankrus, 30 s. 42 s. 42 s. 43 s. 54 s. 55 s. 56 s. 56 s. 82 s. 121 ss. 122, s. 168 (Agricul	Law Inter A	rporati Revision Act, 18	ions Acon Act, (83)	st, 1883 1883) gland)), s. 8 Act, 18	578 39 121 823, 375 443 324, 325 324 73 73, 454 454—461, 528 73 455 455 458 325 454 325 454

_	ict. c.	OT	(A	gricu	ltural	Holdin	gs (En	gland	Act. 1	888)		
				4	•••	•••	•••			·	552,	5
-				5	•••	•••	•••	• • •	•••	•••	541,	
			8.	7	•••	•••	•••	•••	•••	•••	•••	5
				17	•••	•••	•••	•••	•••	•••	•••	5
				24	•••	•••	•••	• • •	•••	547,	553,	5
				25,	26	•••	•••	•••	•••	•••	•••	5
				27	•••	•••	•••	•••	•••	•	•••	5
				28	•••	•••	•••	•••	•••	467,	477,	
				29	•••	•••	•••	•••	•••	•••	545,	
				80	•••	•••	•••	•••	•••	•••	555,	
				31,	32	•••	•••	•••	•••	556,	561,	
				33	•••	•••	•••	•••	•••	•••	**** * 00	4
				34 , 35–	_97	•••	•••	•••	•••	•••	523 ,	
				. 33— . 38—		• • •	•••	•••	•••	•••	•••	5
				. 41 . 41	-40	•••	•••	•••	•••	940	474,	5
				42	•••	•••	•••	•••	•••	240,	2/4,	5
				43	•••	•••	•••	•••	•••	•••	43,	
				44	•••	•••	•••	•••	• • •	•••	70,	2
				45	***	***		•••	•••	264	267,	
				46	•••		•••	•••	•••		279,	
				47	•••	•••		•••	•••		··,	2
				48	•••	• • •	•••	•••	•••	• • •	314,	
				49-		•••	•••	• • •		• • •	•••	2
			8.	52	•••	• • •	•••	•••	•••	•••	•••	2
			8.	53	•••	•••	•••	•••	•••	•••	•••	5
				54	•••	•••	•••	•••	2	79, 299,	467,	
				55	•••	•••	•••	•••	•••	•••	•••	5
				56	•••	•••	•••	•••	•••	•••	•••	5
				57	•••	•••	•••	•••		• • •	• • •	5
				58		•••	•••	•••	•••	•••	•••	5
				59	• • •	•••	•••	•••		•••	• • •	5
				60	• • •	•••	•••	•••		***	•••	5
				61	•••			•	•	41, 545,	•	_
	_	<u>a</u> n		62	iltumali	 Waldin	•••		•••		•••	5
	C,	. 02	(A)	gricu	uturai.		/CI	41 · · ·	A	(XX) R. 4		5
N- 10 17:	ot a	10	ie.	2+12	Land	utbiou L +° V	gs (Sco	tland)	Act, 18	,00,,00	z	_
& 48 Vi	ict. e.	. 18	(Se	ettled	l Land	Act, 1	gs (Sco 884)—	·		,00,, 0. 1	_	
& 48 Vi	ict. e.	. 18	(Se	ettled 4	l Land 	Act, 1	884)—	•••	•••	•••	43	3,
& 48 Vi	let. e.	. 18	(Se 8.	ettled 4 5 (1)	l Land (3)	Act, 1	884)—	•••	•••	•••	43	3,
& 48 Vi	ict. c	. 18	(Se s. s.	ettled 4 5 (1)	l Land (3)	Act, 1	884)—	•••	•••	•••	43 	,
& 48 Vi	let. e.	. 18	(Se 8.	ettled 4 5 (1) 6 7	l Land (3)	Act, 1	884)	•••	•••	•••	43 45	, ,
& 48 Vi	ict. e.	. 18	(Se s. s. s. s. s.	ettled 4 5 (1) 6 7 8	(3)	Act, 1	884)	•••	•••	•••	43 45	;, ;,
& 48 Vi	ict. e.	. 18	(Se s. s. s. s. s.	ettled 4 5 (1) 6 7 8 [orks]	(3) (3) hire Re	Act, 1	884)— s Act,		•••		43 45	;, ;,
& 48 Vi	ict. e.	. 18	(Se s. s. s. s. (Y	ettled 4 5 (1) 6 7 8 orksl 6	(3) hire Re	Act, 1	884)— s Act,	1884)		 185,	43 45 429,	, , 4
	c. c.	. 18 . 54	(Se s. s. s. s. (Y s. ss.	ettled 4 5 (1) 6 7 8 orksl 6 28, orksl	(3) hire Re	Act, 1	884)— Act,	1884)	•••	185,	43 45 429, 	, 4 1 4
	c. c.	. 18 . 54	(Se s. s. s. s. (Y s. ss.	ettled 4 5 (1) 6 7 8 orksl 6 28, orksl	(3) hire Re	Act, 1	884)— Act,	1884)	•••	185,	43 45 429, 	, 4 1 4
& 49 Vi	c. c. c. c.	. 54 . 26 . 72 . 79	(Se s. s. s. (Y s. ss. (Y) (H) (C)	ettled 4 5 (1) 6 7 8 orksl orksl ousin	l Land (3) hire Re	Act, 1	884)— Act, 1 king C 885), s	1884) 1885) lasses	 Act, 18	 185, 85), s. 1	43 45 429, 	, 4 1 4 3
& 49 Vi	ct. c. c. c. ct. c.	. 18 . 54 . 72 . 79	(Se s. s. s. (Y s. ss. (Y (Cr (Cr)	ettled 4 5 (1) 6 7 8 orksl corksl cousin	l Land (3) hire Re ag of th Lands anship	Act, 1 egistries ie Wor Act, 1 of Infe	884)— s Act, king C 885), s	1884) 1885) lasses 2	 Act, 18	185, 85), s. 1	43 45 429, 429,	, 4 1 4 4 3
& 49 Vi	ct. c. c. c. ct. c.	. 18 . 54 . 72 . 79	(Se s. s. s. (Y s. ss. (Y (Cr (Cr)	ettled 4 5 (1) 6 7 8 orksl corksl cousin	l Land (3) hire Re ag of th Lands anship	Act, 1 egistries ie Wor Act, 1 of Infe	884)— s Act, king C 885), s	1884) 1885) lasses 2	 Act, 18	185, 85), s. 1	43 45 429, 429,	4 1 4 4 3
& 49 Vi & 50 Vi	ct. c. c. c. c.	. 54 . 26 . 72 . 79 . 27	(Sc. 8. 8. 8. (Y 8. 88. (Y (Cr. (Cr. (E) 8. 88. (Y 6. 88	ettled 4 5 (1) 6 7 8 orksl orksl ousin rown uardi xtrao 7	l Land (3) hire Re ag of th Lands anship rdinary	Act, 1 gistries le Wor Act, 1 of Info	Act, Act, Act, Series Act, Reden	1884) 1885) lasses . 3 et, 1886	 Act, 18	 185, 885), s. 1	43 429, 429, 2	3, 41 44 3
& 49 Vi & 50 Vi	ct. c. c. c. c.	. 54 . 26 . 72 . 79 . 27	(Sc. 8. 8. 8. (Y 8. 88. (Y (Cr. (Cr. (E) 8. 88. (Y 6. 88	ettled 4 5 (1) 6 7 8 orksl 6 28, orksl ousin rown uardi xtrao 7	(3) (3) ire Reg of the Lands anship rdinary	gistries agistries Act, 1 of Info	884)— Act, king C 885), s nts Ac	1884) 1885) lasses 2 . 8 et, 1886 aption	Act, 18	185, 85), s. 1	43 45 429, 429,	, 4 1 4 3
& 49 Vi & 50 Vi	ct. c. c. c. c.	. 54 . 26 . 72 . 79 . 27	(So s. s. s. s. (Y s. ss. (Y (C) (G) (E) s. (A)	ettled 4 5 (1) 6 7 8 orksl orksl ousin rown uardi xtrao 7 llotm Crop	(3) hire Rends anship rdinary ents and sarct,	gistries agistries Act, 1 of Info	884)— Act, king C 885), s nts Ac	1884) 1885) lasses 2 . 8 et, 1886 aption	Act, 18	 185, 885), s. 1	43 45 429, 429,	, 4 1 4 3
& 49 Vi & 50 Vi	ct. c. c. c. c.	. 54 . 26 . 72 . 79 . 27	(So s. s. s. s. (Y s. ss. (Y (C) (G) (E) s. (A)	ettled 4 5 (1) 6 7 8 orksl 6 28, orksl ousin rown uardi xtrao 7	(3) hire Rends anship rdinary ents and sarct,	gistries agistries Act, 1 of Info Tithe ad Cott 1887)	Act, Act, Act, Reden	1884) 1885) lasses 3 et, 1886 aption	Act, 18	185, 85), s. 1	43 429, 429, 2 for 560,	, 41443 22
& 49 Vi & 50 Vi	ct. c. c. c. c.	. 54 . 26 . 72 . 79 . 27	(So s. s. s. s. s. (Y s. ss. (Y (C) (G) (E) s. (A) s. s.	ettled 4 5 (1) 6 7 8 orksl orksl ousin rown uardi xtrao 7 llotm Crop 2 4	(3) hire Rends anship rdinary ents and serts.	gistries agistries Act, 1 of Info Tithe ad Cott 1887)	Act, Act, Act, Act, Reden	1884) 1885) lasses 8 et, 1886 aption ardens	Act, 18	185, 85), s. 1	43 429, 429, 2 for 560,	, 41443 22 55
& 49 Vi & 50 Vi	ct. c. c. c. c.	. 54 . 26 . 72 . 79 . 27	(S. s. s. s. (Y. ss. (Y. (C) (E) (A) s. s. s.	ettled 4 5 (1) 6 7 8 forksl 6 28, orksl ousin rown uardi xtrao 7 llotm Crop 2 4 5	(3) hire Reads and Lands anship rdinary ents and Act,	gistries egistries Act, 1 of Infe Tithe 1887)	Act, Act, Act, Act, Reden	1884) 1885) lasses 8 et, 1886 aption ardens	Act, 18	185, 885), s. 1 886) ensation 36, 558,	43 429, 429, 2 for 560,	, 41449 22 555
& 49 Vi & 50 Vi	ct. c. c. c. c.	. 54 . 26 . 72 . 79 . 27	(S. s. s. s. s. (Y. s. s. (Y. (C) (G) (E) s. (A) s.	ettled 4 5 (1) 6 7 8 orksl orksl ousin rown uardi xtrao 7 llotm Crop 2 4 5 6	(3) hire Rends anship rdinary ents and sents and	gistries egistries Act, 1 of Info Tithe 1887)	Act, Act, Act, Reden	1884) 1885) lasses 2. 8 2t, 1886 aption ardens	Act, 18	185, 885), s. 1 886) 988tion 86, 558,	43 45 429, 2 for 560, 558,	, 41443 22 55555 5
& 49 Vi & 50 Vi	ct. c. c. ct. c.	. 18 . 26 . 72 . 79 . 27 . 54	(S. s. s. s. (Y. s. s. (Y. (C) (G) (A) s.	ttled 4 5 (1) 6 7 8 orksl 6 28, orksl ousin rown uardi xtrao 7 llotm Crop 4 5 6 13-	(3) (3) hire Reads anship rdinary ents and sents and sen	gistries egistries Act, 1 of Info Tithe 1887)	Act, Act, Act, Reden	1884) 1885) lasses 1886 aption ardens	Act, 18	185, 886), s. 1 snsation 86, 558,	43 45 429, 2 for 560, 558,	, 41443 22 55555 5
& 49 Vi & 50 Vi	ct. c. c. ct. c.	. 18 . 26 . 72 . 79 . 27 . 54	(S. s. s. s. y. s. s. s. (Y. (C) (G) (E) (A) s.	ettled 4 5 (1) 6 7 8 forksl 6 28, forksl cousin rown uardi xtrao 7 llotm Crop 4 5 . 6— . 13— llotm	(3) hire Rends anship rdinary ents and sents Act, 12 -18 ents A	gistries egistries Act, 1 of Info Tithe 1887) ct, 188	Act, Act, Act, Reden	1884) 1885) lasses 3 et, 1886 aption ardens	Act, 18 Act, 18 Compe	185, 885), s. 1 886) 988tion 86, 558,	43 45 429, 2 for 560, 558,	, 41443 22 55555 5
& 49 Vi & 50 Vi	ct. c. c. ct. c.	. 18 . 26 . 72 . 79 . 27 . 54	(S. s. s. s. Y. s.	ttled 4 5 (1) 6 7 8 orksl 6 28, orksl ousin rown uardi xtrao 7 llotm Crop 4 5 . 6— . 13— llotm 2	(3) hire Reg of the Lands anship rdinary ents and sents Act,	gistries egistries Act, 1 of Info Tithe 1887) ct, 188	Act, I king C 885), s ants Act.	1884) 1885) lasses 3 et, 1886 aption ardens	Act, 18 3) Act, 18	185, 886), s. 1 snsation 86, 558,	43 	, 41449 22 55555 5
& 49 Vi & 50 Vi	ct. c. c. ct. c.	. 18 . 26 . 72 . 79 . 27 . 54	(S. s. s. s. (Y. ss. (Y. (C) (G) (E) (A) s.	ttled 4 5 (1) 6 7 8 orksl orksl ousin rown uardi xtrao 7 llotm Crop 4 5 . 6— . 13— llotm 2 3	(3) hire Rends anship rdinary ents and sents Act, 12 -18 ents A	gistries egistries Act, 1 of Info Tithe 1887) ct, 188	Act, Act, Section of Act, Sect	1884) 1885) lasses 2, 1886 aption ardens	Act, 18 Act, 18 Compe	185, 885), s. 1 886) 886, 558,	43 45 429, 2	, 41443 22 555555 5
& 49 Vi & 50 Vi	ct. c. c. ct. c.	. 18 . 26 . 72 . 79 . 27 . 54	(S. s. s. s. Y. S.	ttled 4 5 (1) 6 7 8 orksl orksl ousin rown uardi xtrao 7 llotm Crop 4 5 . 6— . 13— llotm 2 3	(3) hire Reg of the Lands anship rdinary ents and sents Act,	gistries egistries Act, 1 of Info Tithe 1887) ct, 188	Act, I king C 885), s ants Act.	1884) 1885) lasses 2 2 3 2 4 1886 aption ardens	Act, 18 3) Act, 18	185, 886), s. 1 snsation 86, 558,	43 	, 41443 22 5555

									D	AGE
50 & 51 Vict.	c. 48	(Allotmo		-	87)—		•		•	
		s. 7 (3)	(4)	•••	•••	•••	•••	•••	•••	520 34
		s. 7 (5)	•••	•••	•••	•••	•••	•••	•••	520
		s. 7 (6)		•••	•••	•••	•••	•••		520
		s. 8 `´	• • •	•••	•••	•••		35,		
51 & 52 Vict.	c. 21	(Law of	Distre	ss Am	endmer	nt Act.	. 1888)-	oo,	000,	0,0
		8. 4	•••	•••	•••	•••	•••		266,	314
	•	8. 5	•••	•••	•••	•••	•••	•••	300,	
		s. 6	•••	•••	•••	•••	•••	•••	301,	305
		s. 7	•••	•••	•••	•••	•••	•••		280
		8. 8	•••	•••	•••	•••	•••	•••		280
	o 49	8. 9	···	···	••• •••			•••	•••	280
	U. 42	(Mortma	un and	i Unar	itable (Jses A	ct, 1888	3)	•••	23
		s. 4 s. 5	•••	•••	•••	•••	•••	•••	•••	39
		s. 6	•••	•••	•••	•••	•••	•••	•••	39
		8. 7	•••	•••	•••	•••	•••	•••	30,	, 39
		s. 10	•••	•••	•••	•••	• • •	•••	94	39
	c. 43	(County					•••	•••	90	, 40
		s. 49	•••	•••						322
		s. 56	•••	•••	•••	•••	•••	•••		568
		s. 59	•••	•••	•••	•••	•••	•••		578
	•	s. 60	•••	•••	•••	•••	•••	• • •		577
		s. 67	•••	•••	•••	•••	•••	•••	111,	
•		88. 108,	109	•••	•••	•••	•••	•••		310
			•••	•••	•••	•••	•••	•••	• • •	141
		s. 120	•••	•••	•••	•••	•••	•••	312,	578
		8. 134	190	•••	•••	•••	•••	•••	•••	
		ss. 135, s. 137		•••	•••	•••	•••	•••	310,	
		s. 137 s. 138	•••	•••	•••	•••	•••	•••		312
		100	•••	•••	•••	•••	•••	•••	577,	
		T 40	•••	•••	•••	•••	•••	•••	577,	_
	•	8. 147	•••	•••	•••	•••	• • •	•••		578 265
		s. 160	•••	• • •	•••	•••	•••	•••	321,	
		s. 184	•••	• • •	•••	•••	•••	•••	-	16
•		s. 186	•	•••	•••		•••	•••	•••	577
	c. 51	(Land C	harges	Regis	tration	and S	earches	Act, 18	388)	70.
								466	555	
	c. 62	(Preferen	ntial P	'aymer	its in B	ankru	ptcy Ac	t, 1888))	828
50 to 52 Viet	. 92	8. I	 T 3	••• A _		•••	•••	•••	3 26,	
52 & 53 Vict.	c. 30	(Deletin		Act, 1	889), s.	. Z	•••	•••	•••	46
	c. 40	(Palatine (Arbitra	tion A	~+ 12°	urnam oo'		-		* 40	51
	U. X 0	s. 12	MOH A	CL, 10	-	• • •	•••	_	548,	
		s. 12 s. 16	•••	•••	•••	•••	•••	•••		544 549
	c. 63	(Interpr	etation		1889)	•••	•••	4, 42,		548
53 & 54 Vict.	c. 5 (Lunacy	Act, 1	890)		•••	•••	-, <i>-</i> 20,	010,	11
	Ì	s. 2	•••	•••	•••	•••	•••	•••	•••	11
		s. 108	•••	•••	•••	•••	•••	•••		, <u>12</u>
			•••	•••	•••	•••	•••	•••		13
			•••	•••	•••		•••	•••		, 12
		s. 121	•••	•••	•••	•••	•••	•••	•••	11
		s. 122	•••	•••	•••	•••	•••	•••	11,	, 12
		s. 123	•••	•••	•••	•••	•••	•••	•••	11
		s. 124 s. 341		***	•••	•••	•••	•••	•••	12
	c. 18	(Workin	o Clas	 Reeg Da	 Walling	A of	 /^^9 L	•••	•••	12
	c. 51	(Statute	Jaw J	Reviei	Ju (NV actituRi	9) Ac	+ 180V/ +08A)	···	•••	39
	c. 57	(Tenants	' Com	pensat	ion Act	1890	, TORU)	, 5. 0 R KQA	 580 F	126 81
								·, •••,		562
		88. 3, 4	•••	•••	•••	•••	•••	•••		562
	c. 63	ss. 3, 4 (Compar	aies (V	Vindin	g-up) A	ct, 18	90)	•••	•••	78-
		-	•			•	•	· = *	- - -	. •

ת	3 & 54 Vict. c.	65	(A11	otme	nts Ac	t. 1890	1	•••			P	AGE 35
·					Land A			•••	•••	•••	•••	204
			8. 7	_	•••	•••	•••	•••	•••	•••	•••	44
			8. 8		•••	•••	•••	•••	•••	•••		194
			8.]		···	•••	•••	•••	•••			, 70 42
			8. I	1 3 (ii) 15	•	•••	•••	• • •	•••	•••	•••	59
			s. 1		•••	•••	•••	•••	•••	•••	•••	44
			8.]		•••	•••	•••	•••	•••	•••	•••	43
	C	. 70	•		g of the	Work Work	ing Cla	usses A	1ct, 18	390)		
			8.]		•••	•••	•••	•••	•••	•••	•••	33
			8. 7 8. 7	57 (2) 74	,	•••	•••	•••	•••	•••	43	33 557
	C.	71		_	otcy Ac	 et. 1890	0)	•••	•••	•••	20,	00.
		–	8.]	_	•••	•••	•••	•••	•••	•••	455,	460
			8. 2		•••	•••	•••	•••	•••	•••	•••	824
5	64 Vict. c. 8 (T	ithe			-					000	000	000
			8.] 8. 2		•••	***	•••	•••	•••	252,	233,	386 282
				6, 9	•••	•••	•••	•••	•••	•••	•••	288
			s. 1		•••	•••	•••	•••	•••	• • •	232,	
5	4 & 55 Vict. c.	27	_		Act, 1	891), s	. 27 (1)	•••	•••	•••	•••	12
	C,	. 39	•		Act, 18	91)	•••	•••	•••	•••	178,	
			8. 4		•••	•••	•••	•••	•••	•••	177,	_
			8. (7, 8	•••	•••	•••	•••	•••	•••	•••	178 175
			88.	•	•••	•••	•••	•••	•••			182
			8.]		•••	•••	•••	•••	• • •	•••	•••	180
			8. 1		•••	•••	•••	•••	•••	•••	179,	
			8. 2		•••	•••	•••	•••	•••	•••	•••	301
			8. (8. (•••	•••	•••	•••	•••	•••	•••	428 428
			8. 7		•••	•••	•••	•••	•••	• • •	100	
				. Z							123.	102
			_	_	•••	•••	•••	•••	•••	•••	123, 128,	
			8. 7 8. 7	75							128,	177 177
			8. 7 8. 7 8. 7	75 76 77	•••	•••	•••	•••	•••	•••	128, 177,	177 177 178
			8. 7 8. 7	75 76 77 78	•••	•••	•••	•••	•••	•••	128, 177, 175,	177 177 178 180
	c	R4	8. 7 8. 7 8. 7 8. 7	75 76 77 78 8c	 hedule	17	 5, 176,	 177,	 182, 2	 281, 301,	128, 177, 175, 428,	177 177 178 180 485
	c.	. 64	8. 7 8. 7 8. 7 8. 7	75 76 77 78 8c	 hedule	17	 5, 176,	 177,	 182, 2	•••	128, 177, 175, 428, 183,	177 177 178 180 485 185,
			s. 7 s. 7 s. 7 (Lai	75 76 77 78 Sc nd Re	 hedule	 17 (Midd	 5, 176,	 177, eeds)	 182, 2 Act, 1	 281, 301, 1891)	128, 177, 175, 428,	177 177 178 180 485 185,
	c.	. 75	8. 7 8. 7 8. 7 (Lai	75 76 77 78 Sc nd Re	hedule egistry	 17 (M idd	 5, 176, lesex D	 177, eeds)	 182, 2 Act, 1 , s. 7	 281, 301, 1891)	128, 177, 175, 428, 183, 429, 	177 178 180 485 185, 430 396 386,
	c.	. 75 . 76	8. 7 8. 7 8. 7 (Lai (Fac (Pu	75 76 77 78 Sc nd Re etory blic I	 hedule egistry and W Health	17 (Midd orksho (Londo	 5, 176, lesex D op Act, on) Act	 177, eeds) 1891)	 182, 2 Act, 1 , s. 7	281, 301, 1891)	128, 177, 175, 428, 183, 429, 383, 393,	177 178 180 485 185, 430 396 386,
5	c.	. 75 . 76 M or	s. 7 s. 7 s. 7 (Lai (Fac (Pu)	75 76 77 78 Sc nd Re etory blic I	 hedule egistry and W Health	17 17 (Midd orksho (Londo	 5, 176, lesex D op Act, on) Act	 177, eeds) 1891) , 1891	182, 2 Act, 1 , s. 7 1), s. 1 8 ment)	281, 301, 1891)	128, 177, 175, 428, 183, 429, 383, 393,	177 178 180 485 185, 430 396 386, 395
	c. c. 55 Vict. c. 11 (2	. 75 . 76 Mor	s. 7 s. 7 s. 7 (Lai (Fac (Pu	75 76 77 78 Sc nd Re etory blic I	 hedule egistry and W Health d Char	17 (Midd orksho (Londo	 5, 176, lesex D op Act, on) Act Uses (A	 177, eeds) 1891)	 182, 2 Act, 1 , s. 7	281, 301, 1891)	128, 177, 175, 428, 183, 429, 383, 393, 92),	177 178 180 485 185, 430 396 386, 395
	c.	. 75 . 76 Mor	s. 7 s. 7 s. 7 (Lai (Fac (Pu	75 76 77 78 Sc nd Re etory blic I in and 2	 hedule egistry and W Health d Char	17 (Midd orksho (Londo	 5, 176, lesex D op Act, on) Act Uses (A	 177, eeds) 1891) , 1891	182, 2 Act, 1 , s. 7 !), s. 1 3 ment)	281, 301, 1891) 21 391, 392, Act, 188	128, 177, 175, 428, 183, 429, 383, 393, 92),	177 178 180 485 185, 430 396 386, 395
	c. c. 55 Vict. c. 11 (2	. 75 . 76 Mor	s. 7 s. 7 s. 7 (Lai (Fac (Pu tmai 1, 2 (Coi s. 2	75 76 77 78 Sc nd Re etory blic I in and 2 nveys 2	 hedule egistry and W Health d Char incing	17 (Midd orksho (Londo itable Act, 18	 5, 176, lesex D op Act, on) Act Uses (A	 177, eeds) 1891) , 1891 	182, 2 Act, 1 , s. 7 1), s. 1 8 ment)	21 391, 392, Act, 188	123, 177, 175, 428, 183, 429, 383, 393, 92), 508, 212,	177 178 180 485 185, 430 396 386, 395 511 509 425
	c. c. 55 Vict. c. 11 (2	. 75 . 76 Mor	s. 7 s. 7 s. 7 (Lai (Fac (Pu tmai 1, 2 (Cor s. 2 s. 3	75 76 77 78 Sc nd Re ctory blic I in and 2 nveys 2 3	hedule egistry and W Health d Char incing	17 (Midd orksho (Londo itable Act, 18	 5, 176, lesex D op Act, on) Act Uses (A 892)	 177, eeds) 1891) , 1891 	182, 2 Act, 1 , s. 7 !), s. 1 	21 391, 392, Act, 188	128, 177, 175, 428, 183, 429, 883, 393, 92), 508, 212,	177 178 180 485 185, 430 396 386, 395 511 509 425 509
	c. c. 55 Vict. c. 11 (2 55 & 56 Vict. c.	. 75 . 76 Mor ss. . 13	s. 7 s. 7 s. 7 (Lai (Fac (Pu) tmai 1, 2 (Co) s. 2 s. 3	75 76 77 78 Sc nd Re ctory blic I in and 2 nveys 2 3 4	hedule egistry and W Health d Char incing	17 (Midd orksho (Londo itable Act, 18	 5, 176, lesex D op Act, on) Act Uses (A 892)	177, eeds) 1891) , 1891 mend	182, 2 Act, 1 , s. 7 1), s. 1 8 ment)	21 391, 392, Act, 188	123, 177, 175, 428, 183, 429, 383, 393, 92), 508, 212,	177 178 180 485 185, 430 396 386, 395 511 509 425 509
	c. c. 55 Vict. c. 11 (2 55 & 56 Vict. c.	. 75 . 76 Mor ss. . 13	8. 7 8. 8 8. 7 (Lai (Fac (Pu tmai 1, 2 (Coi 8. 2 8. 3 8. 4 8. 4 (Sm	75 76 77 78 Sc nd Re etory blic I in and 2 nveys 2 3 4 5 1 all H	hedule egistry and WHealth d Char	17 (Midd orksho (Londo itable Act, 18	 5, 176, lesex D op Act, on) Act Uses (A 892) 	177, eeds) 1891) , 1891 mend	182, 2 Act, 1 , s. 7 !), s. 1 	21 391, 392, Act, 188	128, 177, 175, 428, 183, 429, 883, 393, 92), 508, 212,	177 178 180 485 185, 430 396 386, 395 511 509 425 509 508
	c. c. 55 Vict. c. 11 (2 55 & 56 Vict. c.	. 75 . 76 Mor ss. . 13	8. 7 8. 8 8. 7 (Lai (Fac (Pu tmai 1, 2 (Coi 8. 2 8. 3 8. 4 8. 4 (Sm	75 76 77 78 Sc nd Re etory blic I in and 2 nveys 2 3 4 5 all H	hedule egistry and WHealth d Char	17 (Midd orksho (Londo itable Act, 18	 5, 176, lesex D op Act, on) Act Uses (A 892)	177, eeds) 1891) , 1891 mend	182, 2 Act, 1 , s. 7 !), s. 1 	21 391, 392, Act, 188	128, 177, 175, 428, 183, 429, 883, 393, 92), 508, 212, 505,	177 178 180 485 185, 430 396 386, 395 511 509 425 509
	c. 65 Vict. c. 11 (2 65 & 56 Vict. c.	. 75 . 76 Mor ss. . 13	s. 7 s. 7 s. 7 (Lai (Fac (Pu) tmai 1, 7 (Coi s. 7 s. 8 s. 8 s. 8 s. 8 s. 8	75 76 77 78 8c nd Re etory blic I in and 2 nveys 2 3 4 5 12 12 16	hedule egistry and WHealth d Char	17 (Midd orksho (Londo itable Act, 18	 5, 176, lesex D op Act, on) Act Uses (A 892) 1892)-	177, eeds) 1891) 1891 mend	182, 2 Act, 1 , s. 7 !), s. 1 	21 391, 392, Act, 188	128, 177, 175, 428, 183, 429, 883, 393, 92), 508, 212, 505,	177 178 180 485 185, 430 396 386, 395 36 511 509 425 509 508
	c. 65 Vict. c. 11 (5 65 & 56 Vict. c. c.	. 75 . 76 Mor ss. . 13	8. 7 8. 7 8. 7 8. 7 8. 7 (Lai (Fac (Pu tmai 1, 2 (Coi 8. 2 8. 8 8. 8 (Sm ss. 1 8. 1 (Pu	75 76 77 78 Sc nd Re etory blic I in and 2 nveys 2 3 4 5 12 16 blic I	hedule egistry and WHealth d Char	17 (Midd orksho (Londo itable Act, 13	5, 176, lesex D p Act, on) Act Uses (A	177, eeds) 1891) , 1891 amend	182, 2 Act, 1 , s. 7 l), s. 1 sment)	21 21 21 21 391, 392, Act, 188 495, 	128, 177, 175, 428, 183, 429, 883, 393, 92), 508, 212, 505,	177 178 180 485 185, 430 396 386, 395 511 509 425 508 85, 43 35, 35
5	c. 65 Vict. c. 11 (2 65 & 56 Vict. c. c.	. 75 . 76 Mor ss. . 13	s. 7 s. 7 s. 7 (Lai (Fac (Pu tmai 1, 7 (Cor s. 7 s. 8 s. 7 (Pu (Pu (Pri	75 76 77 78 8c nd Re etory blic I in and 2 nveys 2 3 4 5 12 14 12 16 blic I ivate	hedule egistry and WHealth d Char incing	(Midd orksho (Londo itable Act, 1st as Act,		177, eeds) 1891) 1891 mend s. 11 1892)	182, 2 Act, 1 , s. 7), s. 1 3 ment)	21 391, 392, 391, 392, Act, 188	128, 177, 175, 428, 183, 429, 508, 212, 505, 504,	177 178 180 485 185, 430 396 386, 395 36 511 509 425 509 508 35, 43 35, 35, 38 38 38 38 38 38 38 38 38 38 38 38 38
5	c. c. 65 Vict. c. 11 (55 & 56 Vict. c. c. 65 & 57 Vict. c. 65 & 57 Vict. c. 65 & 57 Vict. c. 65	. 75 . 76 Mor. ss. . 13	8. 7 8. 7 8. 7 8. 7 8. 7 (Lai (Fac (Pu tmai 1, 2 (Cor s. 2 8. 8 (Sm ss. 1 (Pu (Pri (Ind	75 76 77 78 Sc nd Re etory blic I in and 2 nveys 2 3 4 5 12 16 blic I ivate lustri	hedule egistry and WHealth d Char Iolding Librarie Streets al and	17 (Midd orksho (Londo itable Act, 13 s Act, work Provid		177, eeds) 1891) 1891 mend s. 11 1892)	182, 2 Act, 1 , s. 7), s. 1 3 ment)	21 391, 392, 391, 392, Act, 188	128, 177, 175, 428, 183, 429, 508, 212, 505, 504,	177 178 180 485 185, 430 396 386, 395 511 509 425 508 85, 43 35, 35
5	c. c. 65 Vict. c. 11 (25 & 56 Vict. c. c. 65 & 57 Vict. c. c. 65 & 57 Vict. c.	. 75 . 76 Mor ss. . 13	s. 7 s. 7 s. 7 (Lai (Fac (Pu tmai 1, 7 (Cor s. 7 s. 8 s. 7 (Pu (Pri (Ind (Tri	75 76 77 78 8c nd Re etory blic I in and 2 nveys 2 3 4 5 12 16 12 16 blic I ivate lustri	hedule egistry and Whealth d Char Iolding Libraric Streets al and Act, 1	Midd orksho (Londo itable Act, 1s s Act, work Provid 893), s		177, eeds) 1891) 1891 1891 1892 s. 11 1892) cieties	182, 2 Act, 1 , s. 7), s. 1 3 ment)	21 391, 392, 391, 392, Act, 188 495, 	128, 177, 175, 428, 183, 429, 508, 212, 505, 504,	177 178 180 485 185, 430 396 386, 395 511 509 425 508 35, 43 35, 43 508 513 508 513 508 514 508 508 508 508 508 508 508 508 508 508
5	c. c. 65 Vict. c. 11 (55 & 56 Vict. c. c. 65 & 67 Vict. c.	. 75 . 76 Mor. 88. . 13 . 53 . 57 . 53 . 63	s. 7 s. 8 s. 7 (Lai (Fac (Pu tmai 1, 2 (Cor s. 8 s. 8 (Sm ss. 8 (Pu (Ind (Ind (Ind (Ind (Ind (Ind (Ind (Ind	75 76 77 78 8c nd Re etory blic I in and 2 nveys 2 3 4 5 12 16 blic I vate lustri ustee cried cal G	hedule egistry and Whealth d Char incing Iolding Librarie Streets al and Act, 1 Wome overnment	17 (Midd orksho (Londo itable Act, 13 s Act, work Provid 893), s en's Pro		177, eeds) 1891) 1, 1891 mend s. 11 1892) cieties Act, 1	182, 2 Act, 1 , s. 7), s. 1 3 ment)	21 391, 392, 391, 392, Act, 188 495, 	128, 177, 175, 428, 183, 429, 508, 212, 505, 504,	177 178 180 485 185, 430 396 386, 395 509 508 35, 43 35, 35, 36, 37, 38, 38, 38, 38, 38, 38, 38, 38, 38, 38
5	c. c. 65 Vict. c. 11 (55 & 56 Vict. c. c. 65 & 67 Vict. c.	. 75 . 76 Mor. 88. . 13 . 53 . 57 . 53 . 63	8. 7 8. 8 8. 7 (Lai (Fac (Pu tmai 1, 2 (Cor s. 8 8. 8 (Sm ss. 8 (Pu (Pri (Ind (Tri (Ma (Loi s. 8)	75 76 77 78 Sc nd Re etory blic I in and 2 nveys 2 3 4 5 12 16 blic I ivate lustri ustee cal G 5 5 (2)	hedule egistry and Welealth d Char Incing Librarie Streets al and Act, 1 Wome overnu	17 (Midd orksho (Londo itable Act, 13 s Act, work Provid 893), s en's Pro	5, 176, lesex D p Act, on) Act Uses (A	177, eeds) 1891) 1, 1891 mend s. 11 1892) cieties Act, 1	182, 2 Act, 1 , s. 7), s. 1 3 ment)	21 391, 392, 391, 392, Act, 188 495, 	128, 177, 175, 428, 183, 429, 508, 212, 505, 504, 35	177 178 180 485 185, 430 386, 395 36 511 509 425 508 35, 35 35 36 44 16 34
5	c. c. 65 Vict. c. 11 (55 & 56 Vict. c. c. 65 & 67 Vict. c.	. 75 . 76 Mor. 88. . 13 . 53 . 57 . 53 . 63	s. 7 s. 8 s. 7 (Lai (Fac (Pu tmai 1, 7 (Cor s. 8 s. 8 (Sm ss. 8 (Pu (Ind (Tri (Ma (Loi s. 8)	75 76 77 78 8c rotory blic I in and 2 nveys 2 3 4 5 all H 2, 4 12 16 blic I ivate lustri ustee cal G 5 (2) 6 (1)	hedule egistry and Whealth d Char incing Iolding Librarie Streets al and Act, 1 Wome overnm (4)	17 (Midd orksho (Londo itable Act, 13 s Act, work Provid 893), s en's Pro	75, 176, lesex D p Act, on) Act Uses (A	177, eeds) 1891) 1, 1891 mend s. 11 1892) cieties Act, 1	182, 2 Act, 1 , s. 7), s. 1 3 ment)	21 391, 392, 391, 392, Act, 188 495, 1893), s.	128, 177, 175, 428, 183, 429, 383, 393, 92), 508, 212, 505, 504,	177 178 180 485 185, 430 396 386, 395 509 508 35 35 36 511 509 425 509 508 35 36 37 38 38 38 38 38 38 38 38 38 38 38 38 38
5	c. c. 65 Vict. c. 11 (55 & 56 Vict. c. c. 65 & 67 Vict. c.	. 75 . 76 Mor. 88. . 13 . 53 . 57 . 53 . 63	s. 7 s. 8 s. 7 (Lai (Fac (Pu tmai 1, 7 (Cor s. 8 s. 8 (Sm ss. 8 (Pu (Ind (Tri (Ma (Loi s. 8)	75 76 77 78 Sc nd Re ctory blic I in and 2 nveys 2 3 4 5 12 16 blic I ivate lustri ustee cal G 5 (2) 6 (1) 8 (2)	hedule egistry and Whealth d Char incing Iolding Librarie Streets al and Act, 1 Wome overnm (4)	17 (Midd orksho (Londo itable Act, 13 s Act, work Provid 893), s en's Pro	5, 176, lesex D p Act, on) Act Uses (A	177, eeds) 1891) 1, 1891 mend s. 11 1892) cieties Act, 1	182, 2 Act, 1 , s. 7), s. 1 3 ment)	21 391, 392, 391, 392, Act, 188 495, 	128, 177, 175, 428, 183, 429, 508, 212, 505, 504, 36 	177 178 180 485 185, 430 386, 395 36 511 509 425 508 35, 35 35 36 44 16 34

R & K7	Viet e	70 /T	00al C	lawa-	mant l	lat 100	4 \			P.	AGI
6 & 57	V 1GL. G.	•		MAGLI		104, 108	4)—				34
						•••	•••	•••	***	•••	8
						•••		•••	• • •	99	, 34
					•••		•••	•••	•••		3
			. 67	, U	•••		•••	•••	• • •	•••	34
7 & KQ	Vict. c.			Land			•••			•••	3
, a 10		•	_	_	_), ss. 8,			•••		23
						g Act, 1					383
Q & KO	Vict. c.		•				•				18
10 GL U8						endmen				•••	10
	U.	•					-		•		28
			s. 1, 4 . 4		•••		•••		•••		81
	•					Compon		A of	1908)	520,	
	U.					сошћец			1895)		56
		5	. 2	•••	• • •	 K10	 504	508	538, 539,	*** K40	
								<i>32</i> 0,	000, 000,		
			_	_		•••		•••	•••	•••	
50 L 80	Wist a					 Act 190				•••	56 38
98 & OU	Vict. c.									•••	
6 0 L 61						Act, 189					8
סט פב סד	VICE. C.	•		t Gar	пепега	Compe		•	cotland)	ACT,	r o
			897)	n	*** * A -A	7.007\			000 400	450	56
	C.	-	_		-	•	•	-	223, 430,		
			i. 1	_	•••		•••	•••	•••	61,	_
		8	18. 2,	3	•••	•••	•••	•••		•••	6
	775 - 1 -								•••	•••	6
Q 1 82 92	Vict. c	•				I	••• N-4-4	• • • • • • • • • • • • • • • • • • •	10001	•••	
40 L 40						lleges E			1989)	•••	3
02 & 08	Vict. c	•						-			0.0
			s. 10,			•••		•••		•••	38
			s. 12		•••		•••		231,	, 388,	
	_				•••		•••	•••	•••	• • •	3
	C					Act, 18					6
						•••				•••	9
	1771.4				• • • • •		•••			•••	9
03 & 04	l Vict. c									407	55
1	C	. 5/ (Agricu	цтura	i Holali				279, 314,		
			. •			47			536, 537		
			s. 1	•••	•••	•••			542, 548		
			s. 2	•••	•••		-	-	546, 547		
				•••		•••			555	-	,
			8. 4	•••	• • •	•••					
			s. 9	• • •	•••	•••		537,	542, 543	, 558,	, 50
		1	s. 12	73* .	a	• • • •			542		
					Schedu				541, 542		
						lule	•		547, 548-		
	7, c. 10 7, c. 42						1901),	s. 10	01 (2) (8)		
		s. 23			•••	•••		•••	• • •	3	6, 1
		s. 25	(2)		•••	•••	•••		•••	•••	
			_/								
3 Edw.	7, c. 24								•••	•••	8

ADDENDA.

Page 62, note (p). Add a reference to In the Goods of Pryse, [1904] P. 301 (an administrator's title now relates back to the death with respect to real estate as well as with respect to personalty).

Page 85, note (g). Add a reference to Glenwood Lumber Co. v. Phillips (1904), 73 L. J. P. C. 62 (licence amounting to a demise).

Page 86, note (n). Cf. Keith v. Twentieth Century Club (1904), 73 L. J. Ch. 545; 20 T. L. R. 462 (members of a residential club, whether actually resident or not, held to be mere licensees, and not entitled to use an ornamental garden inclosure).

Page 132 (falsa demonstratio). Add a reference to Mellor v. Walmesley, [1904] 2 Ch. 525.

Page 164, note (f). In Woodall v. Clifton, The Times, 24th November, 1904, Warrington, J., held that an option to purchase the fee simple "at any time during the term," contained in a lease for 99 years, was void as transgressing the rule against perpetuities. See, too, an article in the Solicitors' Journal of 26th November, 1904 (Vol. 49, p. 64), and the Law Journal, Vol. 39, p. 644.

Page 250, note (b). Add a reference to Lewis v. Baker (1904), W. N. 190; 21 T. L. R. 17.

Page 334, note (n). Miller v. Hancock was followed in Mantin v. Goitein, reported in The Times, 16th November, 1904.

Page 396, note (t). Add a reference to *Horner* v. *Franklin*, [1904] 2 K. B. 877; 20 T. L. R. 791.

Pages 514, 521, 522. Reynolds v. Ashby and Son, in the House of Lords, is reported, [1904] A. C., 466.

CORRIGENDA.

Page 137, line 23, for "the prescription of a lost grant" read "the presumption of a lost grant."

Page 278, 3rd line from bottom, for "ix" read "six."

THE LAW

OF

LANDLORD AND TENANT.

CHAPTER I.

REQUISITES TO THE CREATION OF THE RELATION OF LANDLORD AND TENANT.

Gran T	Property caracte of period the	PAGE
SECT. I.	PROPERTY CAPABLE OF BEING LET	. 2
SECT. II.	PERSONS CAPABLE OF MAKING AND TAKING LEASES .	. 3
	(1) Restrictions arising from disability	. 3
	i. Infants	. 3
	(a) Leases by or on behalf of infants	. 3
	(b) Leases to infants	. 9
	ii. Lunatics	. 11
	iii. Married women	. 14
	iv. Aliens	. 20
	v. Convicts	. 21
	vi. Corporations	. 21
	(a) Ecclesiastical corporations	. 23
	(b) Universities and colleges	. 30
	(c) The Crown	. 31
	(d) Municipal corporations, &c	. 32
	(e) Building societies, &c	. 36
	(f) Companies	. 36
	vii. Trustees for charitable uses	. 37
	(a) Leases by trustees	. 37
	(b) Leases to trustees	. 39
	(2) Restrictions arising from limited interest	. 40
	i. Tenants in tail	. 40
	ii. Tenants for life	. 41
	iii. Leases by the Court	. 49
	iv. Leases under powers	. 50
	v. Trustees and personal representatives	
	vi. Co-owners	. 57
	vii. Copyholders	. 63
		. 64
	viii. Mortgagor and mortgagee	. 66
	ix. Judgment creditors	. 70
	x. Agents	. 70
	xi. Receivers, &c.	. 72
	(3) Restrictions arising from confidential relations .	. 73
	(4) Leases by estoppel	. 74

General rule.

	_
	PAGI
SECT. III. AN ACTUAL LETTING, OF SPECIFIC ENFORCEMEN Agreements distingu Present effect of agreement.	ished from leases
SECT. IV. EXCLUSIVE Possession Licences distinguished Occupation by a service Lodgers	
SECT. I.—PROPERTY CA	PABLE OF BEING LET.
In accordance with the rule	that whatever may be granted
for ever may be granted for a ti	
kinds of interests and possession	•
hereditaments, as land or min	_
vesture, or herbage thereof (c), o	
such buildings, such as stalls or	_
of incorporeal hereditaments, su	
manor (f) , a ferry (g) , a fair or n	•
son (i)—but a lease of an advo	
Benefices Act, 1898 (k)—a severa	_
of fishing in specified portions	
tithes (o), tolls (p), and rights	·
of easements, such as a rig	
(a) Bac. Abr. (A.) 639. (b) See Jegon v. Vivian (1865), L. R. 1 C. P. p. 18; G. W. Ry. v. Smith (1876), 24 W. R. 443. (c) Co. Litt. 47 a; cf. Masters v. Green (1888), 20 Q. B. D. 807, where	Taunt. 95. See Kensey v. Langham (1735), Cas. temp. Talbot, 144. (k) 61 & 62 Vict. c. 48; see sect. 1 (1) (b). (l) Somerset v. Fogwell (1826), 5. B. & C. 875.
"the exclusive right to feed the	(m) Grove v. Portal, [1902] 1 Ch.
grass" on certain land was granted; and see Cattle v. Gamble (1838), 5	727. (") Shep. Touch. 222.
Bing. N. C. 46.	(o) Brewer v. Hill (1794), 2 Anst.
(d) Leader v. Moody (1875), 20 Eq. 145, 152.	413; Walker v. Wakeman (1676), 1 Ventr. 294, 2 Lev. 150, 3 Keb. 595.
(e) Sury v. Brown (1623), Latch.	See, as to leases of tithes by eccle-
99. See, as to leases of wastes and	siastical persons, 5 Geo. 3, c. 17.
commons. 13 Geo. 3. c. 81. s. 15.	(y) Bridgland v. Shapter (1839), \bar{z}

infra, p. 64, note (r).

(f) Gibson v. Searl (1606), Cro. Jac. 84, 176.

- (g) R. v. Nicholson (1810), 12 East, 330; Peter v. Kendal (1827), 6 B. & C. 703.
- (h) Bridgland v. Shapter (1839), 5 M. & W. 375.
- (i) Bousher v. Morgan (1794), 2 Anst. 404; Cox v. Brain (1810), 3

M. & W. 375; Shepherd v. Hodsman (1852), 18 Q. B. 316. See Harris v. Morrice (1842), 10 M. & W. 260.

(q) Gearns v. Baker (1875), 10 Ch. 355; West v. Houghton (1879), 4 C. P. D. 197; Bird v. G. E. Ry. Co. (1865), 19 C. B. N. S. 268.

(r) Newmarch v. Brandling (1818),

3 Swanst. 99.

stock (s), and other goods and chattels (t), as railway rolling stock (u).

Such offices as do not concern the administration of justice, but only require skill and diligence, may, it is said, be granted for years; but offices to which a trust is annexed, or which concern the administration of justice (x), and dignities and honours (y), cannot be so granted. All alienations of pensions granted by the Crown for military services (including, therefore, leases of such pensions) are void (z).

SECT. II.—PERSONS CAPABLE OF MAKING AND TAKING LEASES.

A tenant in fee simple with an indefeasible estate has, as part Owner in fee. of his rights of ownership, an absolute power of granting leases upon such terms as he pleases. A tenant in fee simple with an executory limitation over, on failure of his issue or in any other event, has the powers of leasing conferred on a tenant for life by the Settled Land Act, 1882 (a).

Leases for limited terms, and subject to the observance of Owners under conditions and restrictions, may be granted or accepted by, or disability and limited on behalf of, persons ordinarily unable to contract, or possessing owners. only a limited interest in the demised premises.

(1) RESTRICTIONS ARISING FROM DISABILITY.

I. INFANTS.

(a) Leases by or on behalf of Infants.

Leases of the property of infants may be made under the Settled Land Act, 1882, the Settled Estates Act, 1877, and the Infants' Property Act, 1830.

(s) Spencer's Case (1583), 5 Rep. 16 b; Tudgay v. Sampson (1874), 30 L. T. 262; Holme v. Brunskill (1877), 3 Q. B. D. 495.

(t) Bac. Abr. (A.) 639; see Sheffield Waggon Co. v. Stratton (1878), 48 J. J. Q. B. 35; though it was questioned by Collins, J., in Jones v. Comm. of In. Rev., [1895] 1 Q. B. 484, whether there can be, strictly speaking, a lease of chattels.

(u) Att.-Gen. v. G. E. Ry. Co.(1879), 11 Ch. D. 449; Luncashire Waggon Co. v. Nuttall (1879), 40 L. T. 291.

(x) Bac. Abr. (A.) 639—641; Reynel's Case (1612), 9 Rep. p. 96 b; Howard v. Wood (1679), 2 Lev. 245. See also 5 & 6 Edw. 6, ss. 2, 3.

(y) Bac. Abr. (A.) 642; Co. Litt. 16 b; Reynel's Case (1612), 9 Rep. p. 97 b.

(z) Army Act, 1881 (44 & 45 Vict. c. 58), s. 141; Lloyd v. Cheetham (1861), 3 Giff. 171. Assignments of half-pay were void at common law: Flarty v. Odlum (1790), 3 T. R. 681; Lidderdale v. D. of Montrose (1791), 4 T. R. 248.

(a) 45 & 46 Vict. c. 38, infra, p. 41.

Leases under the Settled Land Act, 1882 (b), s. 59. Sect. 60.

Where an infant is in his own right seised of or entitled in possession to land of any tenure (c), for the purposes of the Settled Land Act, 1882, the land is settled land, and the infant is deemed tenant for life thereof. Where a tenant for life, or a person having the powers of a tenant for life under the Act (d), is an infant, or an infant would, if he were of full age, be a tenant for life, or have the powers of a tenant for life under the Act, the powers of a tenant for life under the Act may be exercised on his behalf, (1) by the trustees of the settlement for the purposes of the Act (e), or if there are none, (2) by such person and in such manner as the Court, on the application of the guardian or next friend of the infant, either generally or in a particular instance orders (f). Thus whether the infant is absolutely entitled to freehold, copyhold, or leasehold hereditaments, or whether he is tenant for life or falls within any of the classes of owners who have the powers of a tenant for life under the Act (g), the powers of leasing (h), and of accepting surrenders and granting new leases (i), contained in the Settled Land Acts may be exercised on his behalf. Where an infant is entitled in fee, subject to an executory limitation over in the event of death under twenty-one, he falls within sect. 51 (1) (ii) of the Act of 1882, and the powers of a tenant for life can be exercised on his behalf under sect. 60(k); but where he is only contingently entitled the Act does not apply (1).

Where by the settlement a power of leasing is vested in any other person than the tenant for life, and the tenant for life is an infant, the consent required under sect. 56(m) must be given by the trustees of the settlement (if any) (n): otherwise by a person

(b) 45 & 46 Vict. c. 38.

(c) "Land" when used in an Act of Parliament passed after 1850 includes "messuages, tenements, and hereditaments, houses and buildings of any tenure: "Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 3. In the Settled Land Act, 1882, the word "land" also includes incorporeal hereditaments and an undivided share in land: sect. 2, sub-sect. (10)(i).

(d) Infra, p. 47.

(e) See infra, p. 44, note (d).

(f) The application is made by summons in Chambers: S. L. Act Rules, 1882, r. 2.

(g) Where the infant has a limited interest the power to lease conferred

by the Act extends only to the estate or interest which is the subject of the settlement under which he claims, and the lease is only binding on persons claiming under such settlement: S. L. Act, 1882, s. 2 (3).

(h) Infra, p. 41.(i) Infra, p. 45.

(k) Re James's S. E. (1884), 32 W. B. 898; Re Morgan (1883), 24 Ch. D. 114.

(l) Re Horne's S. E. (1888), 39 Ch. D. 84; and, as to sect. 59, see Re Wells (1883), 31 W. R. 764; Re Greenville Estate (1883), 11 L. R. Ir. 138; Re Powell (1884), W. N. 67.

(m) Infra, p. 45.

(n) Re D. of Newcastle's Estates (1883), 24 Ch. D. 129.

appointed by the Court under sect. 60, but in this latter case the notice required by sect. 45 need not be given (o).

The Settled Estates Act, 1877 (p), enables a tenant for life, Leases under and certain other classes of limited owners, when entitled in possession, to grant leases for twenty-one years without appli- 1877. cation to the Court, and it confers a more extensive power of leasing with the sanction of the Court (q). Under sect. 49 all Sect. 49. powers given by the Act, and all applications to the Court, and consents to and notifications respecting such applications, may be executed, made, or given by, and all notices under the Act may be given to, guardians on behalf of infants (r), save that in the case of an infant tenant in tail no application to the Court or consent to or notification respecting any application is to be made by any guardian without the special direction of the Court. The scope of the Act was extended by sect. 41 of the Conveyancing Act, 1881 (s), which enacts that where a person in his own right, seised of or entitled to land (t) for an estate in fee simple, or for any leasehold interest at a rent, is an infant, the land shall be deemed to be a settled estate within the Settled Estates Act, 1877. The section applies where an infant is entitled contingently only, e.g., on attaining twenty-one (u).

Where an infant is seised or possessed of or entitled to any Leases under land in fee or in tail (x), or to any leasehold land for an absolute interest, the Court can sanction leases to extend beyond majority under the Infants' Property Act, 1830(y). And where, in the absence of disability, a renewal of a lease might be compelled, the infant, or his guardian in his name, may, by the direction of the Court, accept a surrender and grant a new lease (z). For

the Settled Estates Act,

the Infants' Property Act. 18**3**0, s. 17.

- (o) Re Countess of Dudley's Contract (1887), 35 Ch. D. 338.
 - (p) 40 & 41 Vict. c. 18. (q) Infra, pp. 48, 49.
- (r) It has been held that a special guardian must be appointed by the Court to consent on behalf of an mant incumbrancer: Re Caddick (1859), 7 W. R. 334; Re Jumes (1868), L. R. 5 Eq. 334. See Re Marquis of Salisbury (1876), 2 Ch. D. p. 39.

(8) 44 & 45 Vict. c. 41.

(t) "Land" in this Act "includes land of any tenure, and tenements and hereditaments, corporeal and incorporeal, and houses and other buildings; also an undivided share in land: "sect. 2 (ii).

- (u) Re Liddell (1883), 31 W. R. 238; Re Sparrow's Estate, [1892] 1 Ch. 412.
- (x) Re Spenser's Estates (1867), 37 L. J. Ch. 18; Re Letchford (1876), 2 Ch. D. 719; Re Clark (1866), L. R. 1 Ch. 292. Cf. Re Evans (1835), 2 My. & K. 318; Ex parte Legh (1846), 15 Sim. 445.
- (y) 11 Geo. 4 & 1 Will. 4, c. 65; Austey v. Hobson (1853), 1 Sm. & G. 505. As to setting aside a lease so granted, see Seaton v. Staniland (1862), 4 Giff. 61.

(z) Sect. 16. See sects. 20 and 21 as to payment and application of fines, and sect. 31 as to validity of surrenders, &c., made under the Act.

practical purposes this Act has been superseded by the other Acts mentioned above (a).

Leases not in pursuance of statutes.

The sovereign may, during minority, grant a valid lease (b). An infant above the age of fifteen, seised in fee of lands subject to the custom of gavelkind, may make a lease of such lands for life, by livery of seisin made in person and not by attorney (c).

A lease granted by an infant, otherwise than under this prerogative, or custom, or the provisions of the above-mentioned
statutes, is, as a general rule, not void, but voidable, and it may
be avoided by him on attaining his majority (d), or by his heir,
if he dies before that event (e); though if the lease is granted
fraudulently by the infant, and a fine has been paid for it, the
lease will only be set aside on the terms of the infant repaying
the fine (f). A lease arranged before the coming of age, but
executed afterwards, will be set aside if the lessor had no
opportunity of applying his adult judgment (g).

Where, however, the lease is necessarily to the prejudice of the infant, it may be that it is void (h); hence it has been doubted whether a lease reserving no rent, or a nominal rent merely, is not absolutely void, because then, as it is said, there is no semblance of benefit to the infant (i). But the test is not conclusive, for a lease without rent to try title under the old practice in ejectment was allowed to be beneficial (k). On the other hand, it has been said that the infant cannot avoid a lease which is for his benefit (l), but this again seems to be incorrect. In all cases the infant has at least an election whether to avoid

(a) For the practice under the Act of 1830, see Seton, 6th ed. pp. 1029—1033; R. S. C. Ord. 55, r. 2 (9).

(b) Case of the Duchy of Lancaster (1562), Plowd. 217. See Alcock v. Cooke (1829), 5 Bing. p. 352.

(c) Robinson on Gavelkind, 5th ed. 166. A feoffment made under a custom by an infant is excepted from 8 & 9 Vict. c. 106, s. 3, and therefore need not be evidenced by deed.

(d) Co. Litt. 308 a; Zouch v. Parsons (1765), 3 Burr. p. 1806; Slator v. Brady (1863), 14 Ir. C. L. R. 61; Slator v. Trimble (1861), ib. 342, 351; Bac. Abr. (B.) 643; 1 Rol. Abr. 729 D, pl. 2; Williams v. Taperell (1892), 8 T. L. R. 241.

(e) Co. Litt. 45 b; 4 Cruise's Digest, 69.

(f) Esron v. Nicholas (1733), 1 De G. & S. 118. In general, it seems, a fine would not be repayable: see cases cited infra, p. 10.

(g) Say v. Barwick (1812), 1 V. & B. 195. (f. Aylward v. Keurney (1814), 2 Ball & B. p. 478.

(h) See Simpson on Infants, 2nd ed. p. 9.

(i) Humphreston's Case (1574), 2 Leon. 216; Lane v. Cowper (1575). Moore, p. 105. See the observations of Lord Ellenborough in Baylis v. Dineley (1815), 3 M. & S. p. 481.

(k) Rames v. Machin, Noy, 130; Zouch v. Parsons, supra; Bac. Abr. (B.) 643.

(1) Per Buller, J., in Maddon v. White (1787), 2 T. R. p. 161.

the lease or no (m). Assuming that a lease by an infant may be void, it seems that, in order to prevent this result, it is not essential that the rent reserved should be the best (n).

If there is no rent reserved, the infant can, it seems, get rid Avoidance of of the lease during minority (o), but otherwise not till he attains twenty-one (p); and if the lessee is then in possession, the lessor who desires to avoid the lease must manifest his intention by some act of notoriety, as ejectment, entry, demand of possession, or the like; or must, at the least, give notice (q). The execution by him of a new lease of the same premises to another person will not necessarily divest the estate created by the former Moreover, the avoidance must take place within a demise (r). reasonable time of the infant attaining twenty-one, and in considering what is a reasonable time, the question whether or no he was aware of his right to repudiate is not to be taken into account (s).

If the lessor, after attaining his majority, accepts rent, whether Confirmation. (it would seem) due before or after that event (t), or otherwise either verbally (u), or by deed (x), recognizes the lease as subsisting, he formerly could not, and, notwithstanding the Infants' Relief Act, 1874(y), it is conceived that he still cannot, subsequently avoid it, and such confirmation relates back to the date of the lease (z).

(m) Ketsey's Case (1614), 1 Brownlow, 120. For other references to this case, see infru, p. 9.

(u) Slator v. Brady (1863), 14 Ir. C. L. R. p. 65.

(0) Slator v. Trimble (1861), 14 Ir. C. L. R. p. 357.

(p) Bac. Abr. (B.) 643; Slator v. Trimble (1861), 14 Ir. C. L. R. pp. 352, 356, per O'Brien and Hayes, JJ. But see remarks of Parke, B., in North Western Ry. Co. v. M'Michael (1850), 5 Ex. p. 124.

(q) Stator \mathbf{v} . Brady (1863), 14

Ir. C. L. R. p. 66.

(r) Slator v. Brady (1863), ib. p. 65. But see Inman v. Inman (1873), 15 Eq. 260.

(8) Carter v. Silber, [1892] 2 Ch. 278, see pp. 284, 288; aff. sub nom. Edwards v. Carter, [1893] A. C. 360.

(t) Ashfield v. Ashfield (1627), Sir W. Jones, 157, Noy, 92, Latch. 199; Smith v. Low (1739), 1 Atk. 489; Buylis v. Dineley (1815), 3 M. & S. p. 481; Slator v. Trimble (1861), 14 Ir. C. L. R. p. 352.

(u) As by saying to the lessee, "God give you joy of it:" Anon. (1588), 4 Leon. 4, c. 15.

(x) E.g., by mortgaging the land to the lessee by deed referring to the lease: Story v. Johnson (1837), 2 Y. & C. Ex. 586, 607.

(y) 37 & 38 Vict. c. 62, s. 2. Although the section has been held to be applicable to contracts of every kind entered into during infancy (Coxhead v. Mullins (1878), 3 C. P. D. 439), it is considered that it would not apply to a transaction which is not a mere contract, but the creation of an estate or interest; or the lessee might contend that the acts of confirmation amounted to a new contract (see Northcote v. Doughty (1789), 4 C. P. D. 385).

(z) Slator v. Trimble (1861), 14 Ir. C. L. R. p. 353.

The lease of an infant, to be good, must be his personal act. If he appoints an agent to make the lease, it does not bind the infant, nor is the infant's ratification of such lease binding (a).

The lessor may sue for rent during his infancy (b), but if he avoids the lease on attaining twenty-one he cannot recover arrears of rent as rent due under the lease. Apparently he must claim them as damages in an action of trespass (c).

The lessee can in no case avoid the lesse on account of the infancy of the lessor (d).

Leases by guardians.

Of the various classes of guardians it is sufficient to mention guardians by nature and for nurture, guardians in socage, testamentary guardians, guardians by statute, and guardians appointed by the Court. Guardianship by nature and for nurture belong in the first instance to the father, the one extending to the age of twenty-one and the other to fourteen, but they give no more than the custody of the person of the infant (e); consequently the guardian cannot create any tenancy of the infant's lands except perhaps leases at will (f). Guardian in socage (g) has an interest as well as an authority, and can make a lease which will be good as long as the guardianship lasts—that is, till the infant attains fourteen (h). After the infant has attained that age, the lease so made is not void but voidable, and the infant may then (subject to the possible effect of the Infants' Relief Act, 1874 (i)), by acceptance of rent or other act of confirmation, make the lease good and not voidable (k). A testamentary guardian under 12 Car. 2, c. 24, has all the powers of a guardian in socage, the period of guardianship being extended to twentyone (l); consequently he can lease for the minority of the ward (m). And the powers of guardians under the Guardianship of Infants Guardians appointed by the Court Act, 1886 (n), are the same.

⁽a) Per Parke, B. in *Doe* v. *Roberts* (1847), 16 M. & W. p. 781.

⁽b) Smith v. Bowin (1669), 1 Mod. 25.

⁽c) Slator v. Trimble (1861), 14 Ir. C. L. R. p. 352.

⁽d) Zouch v. Parsons (1765), 3 Burr. p. 1806; Slator v. Brady (1863), 14 Ir. C. L. R. p. 66; Forrester's Case (1662), 1 Sid. 41.

⁽e) R. v. Sherrington (1832), 3 B. & Ad. 714.

⁽f) Pigot v. Garnish (1599), Cro. Eliz. 678, 734.

⁽y) Litt. s. 123.

⁽h) Eyre v. Shaftesbury (1722), 2 P. W. p. 122; Wade v. Baker (1697), 1 Ld. Raym. 131; R. v. Oakley (1809), 10 East, 491; R. v. Sutton (1835), 3 A. & E. p. 613.

⁽i) Supra, p. 7, note (y). (k) Bac. Abr. (I. 9) 784.

⁽l) Bedell v. Constable (1665), Vaughan, 179.

⁽m) Shaw v. Shaw (1788), Vern. & Scriv. 607.

⁽n) 49 & 50 Vict. c. 27.

are said to be in the nature of receivers only (o), and they cannot grant leases without the sanction of the Court (p).

(b) Leases to Infants.

In cases where an infant is entitled (q) to any lease for life or Renewal lives or for any term of years either absolute or determinable Infants. upon the death of one or more persons or otherwise, the Court Property Act, may, on the application of the infant or of his guardian or other person on his behalf, order the infant, or his guardian, or a person appointed by the Court in the place of the infant, by deed to surrender the lease and accept in its place a new lease or leases of the premises comprised in the surrendered lease for such number of lives, or for such term or terms of years determinable upon such number of lives, or for such term or terms of years absolute as were mentioned in the surrendered lease, or otherwise as the Court shall direct. The Palatine Courts of Lancaster and Durham have jurisdiction for the above purpose in their respective localities (s).

Leases granted to infants may be avoided by them at majority; Leases to and if the lessee then disaffirms the lease, it has been said that under statute. he will avoid payment of the arrears of rent previously incurred (t), unless the occupation of the premises can be brought under the head of necessaries (u). It was held, however, in Blake v. Concannon (x), upon an examination of Ketsey's Case (t), that, though the repudiation of the lease puts an end to the contract, the lessee remains liable for rent accruing in respect of actual occupation during infancy (y). On the other hand, if the lessee continues to occupy the demised premises, and does not signify his mention to avoid the lease within a reasonable time (z), after

of lease: 1830 (r), s. 12.

(o) Per Patteson, J., in R. v. Sutton (1835), 3 A. & E. p. 608.

(p) 1 Platt on Leases, 380. See

111/ra, p. 72.

(r) 11 Geo. 4 & 1 Will. 4, c. 65. (8) See also sects. 14, 15. As to the practice on applications under the Act, see R. S. C. Ord. 55, r. 2 (9); Seton, 6th ed. p. 1029.

(t) Bac. Abr. "Infancy, and Age"

(1.) 376; Ketsey's Case (1614), Cro. Jac. 320; S. C. sub nom. Kirton v. Elliott, 2 Bulstr. 69, 1 Brownlow, 120, 1 Roll. Abr. 731; Lempriere v. Lange (1879), 12 Ch. D. 675.

(u) Lowe v. (Friffith (1835), 1 Scott, 458; Crisp v. Churchill (1794), cited 1 B. & P. p. 340; Lempriere v. Lange (1879), 12 Ch. D. 675.

(x) (1870), 4 Ir. R. C. L. 323.

(y) Cf. E. of Buckinghamshire v. Drury (1761), 2 Eden. p. 72; Mahon v. O'Farrell (1847), 10 Ir. L. R. 527.

(z) Carter v. Silber, [1892] 2 Ch. 278; aff. sub nom. Edwards v. Carter, [1893] A. C. 360. See per Dallas, J.,

⁽q) It is sufficient if he is beneficially entitled: Re Griffiths (1885), 29 Ch. D. 248. If he is part owner, the consent of the co-owner is required: Betty v. Humphries (1875), Ir. R. 9 Eq. p. 347.

1, 011

attaining his majority, he formerly became liable to pay the rent (including arrears accrued during his minority (a)), and to perform all the other obligations attached to the estate (b). The repudiation should be by express notice, unless the lessor has by his conduct waived notice (c). Where a lease devolves upon an infant by operation of law and he does not disclaim, he is liable for rent during infancy (d), and the rent may be distrained for (e).

Inasmuch as the liability for rent is an incident of the estate, and since, in the absence of avoidance of the lease, the estate remains vested in the lessee, it is conceived that the above cases as to liability for rent still correctly state the law, notwithstanding the provisions of the Infants' Relief Act, 1874 (f). The lessee, however, would not be directly liable on the covenants in the lease, though it would probably be open to the lessor to exercise his right of re-entry for breach of covenant. Where a contract is set aside under the Infants' Relief Act, the infant cannot recover any money actually paid under it for benefits received by him (g); and, generally, where an infant avoids a lease, the test whether he can recover a premium or other money paid for it depends on whether he has derived any real advantage (h). If, for instance, he has occupied under the lease, he cannot recover the premium (i); if he has got no advantage, he can (k). A lease obtained by an infant on a representation that he was of full age will be declared void on the application of the lessor, but he cannot both claim to have the lease declared void and to make the defendant liable for use and occupation (l).

Adoption of lease.

In a recent Scottish case (m), a question having arisen as to

in Holmes v. Blogg (1817), 8 Taunt. p. 39; Doe v. Smith (1788), 2 T. R. 436; Dublin and Wicklow Ry. Co. v. Black (1852), 8 Ex. 181.

(a) Ketsey's Case, supra; Bac. Abr. (B.) 643. Cf. Evelyn v. Chichester

(1765), 3 Burr. 1717.

(b) North Western Ry. Co. v. M. Michael (1850), 5 Ex. p. 124; Mahon v. O'Farrell (1847), 10 Ir. L. R. 527.

(c) Holmes v. Blogg (1817), 8 Taunt. 35.

(d) Kelley v. Coote (1856), 5 Ir. C. L. Rep. 469.

(e) Conny's Case (1612), 9 Rep. 85 a. (f) 37 & 38 Vict. c. 62. See

supra, p. 7.

(g) Valentini v. Canali (1889), 24 Q. B. D. 166.

(h) Hamilton v. Vaughan-Sherrin, &c., Co.. [1894] 3 Ch. 589.

(i) Holmes v. Blogg (1818), 8 Taunt. 508. See Wilson v. Kearse (1801), Peake, Add. Cas. 196; Ex parte Taylor (1856), 8 D. M. & G. 254.

(k) Corpe v. Overton (1833), 10 Bing. 252; Everett v. Wilkins (1874), 29 L. T. 846.

(l) Lempriere v. Lange (1879), 12 Ch. D. 675.

(m) Lord Advocate v. Wemyss, [1900] A. C. 48.

the right of an infant proprietor of estates adjoining the sea to work the coal below low-water mark, his trustees, without the concurrence of the infant, entered into an arrangement with the Crown, as part of which they accepted a lease from the Crown of all the coal below low-water mark. When the infant came of age, he accepted from the trustees an assignment of the lease, and for 14 years worked the coal as tenant under the lease. While so acting, he was unaware that he had proprietary claims to some of the coal below low-water mark. But it was held by the House of Lords that his acts subsequent to his coming of age had debarred him from challenging the lease.

II. LUNATICS.

Leases on behalf of lunatics are made or taken under the Lunacy Act, 1890. For the case of a lunatic limited owner provisions are made by the Settled Land Act, 1882, and the Settled Estates Act, 1877 (n).

Under the Lunacy Act, 1890 (o), the Judge in lunacy (p) may Leases under authorize the committee of the estate of a lunatic (q): (1) to grant leases (r) of any property of the lunatic for building, agricultural, or other purposes; (2) to grant leases of minerals forming part of the lunatic's property, whether the same have been already worked or not, and either with or without the surface or other land; (8) to surrender any lease and accept a new lease (s); and to accept a surrender of any lease and grant a new lease (t). By sect. 116 these statutory powers are applied not only to lunatics so found by inquisition but also to certain other classes of persons who are mentally incapable (u),

Lunacy Act, 1890, s. 120.

(n) Infra, pp. 12, 13.

(ω) 53 & 54 Vict. c. 5. The Act does not extend to Ireland (sect. 2); for Ireland see Lunacy Regulation (Ireland) Act, 1871 (34 & 35 Vict. c. 22).

(p) See sect. 108.

(4) As to a lunatic tenant in tail, The Court in see sect. 122 (1). giving directions to the committee will do what a just and reasonable owner would do: Re Wynne (1872), 7 Ch. 229. As to the committee's liability if he lets without the authonty of the Court, see Re Wilkins (1842), 6 Jur. 308.

(r) Including under-leases, sect.

341; but not, apparently, a lease of an easement: Re Arnott (1891), 35 Sol. Journ. 623.

(s) As to fines on such renewal, see sect. 122 (3).

(t) See sect. 121; and as to fines, premiums, &c., received on a grant or renewal of a lease, see sect. 123 (2). As to executing powers of leasing vested in a lunatic (including a statutory power: Re Salt, [1896] 1 Ch. 117), see sect. 120 (h), (l); and where the power is vested in the lunatic as trustee or guardian, sect. 128; Re X., |1894| 2 Ch. 415.

(u) As to mental incapacity arising from disease or age, see Re X., [1894] and in the case of lunatics not so found they are exercisable by such person, in such manner, and with or without security, as the Judge directs.

Terms of lease, sect. 122 (2).

Leases authorized to be granted and accepted by or on behalf of a lunatic under the Act may be for such number of lives or such terms of years, at such rent and royalties, and subject to such reservations, covenants, and conditions as the Judge approves, and a lease may be authorized in pursuance of a previous contract with the committee, although not made subject to the sanction of the Judge (x).

Jurisdiction.

Subject to the rules in lunacy the jurisdiction of the Judge in lunacy as regards administration and management—including, therefore, both the authorizing and the approval of the terms of leases—may be exercised by the Masters (y). The Rules in Lunacy, 1893 (z), provide that when an order is made authorizing a lease of a lunatic's property, the Masters shall settle a proper lease in pursuance of the order, and their allowance of the lease when settled shall be sufficiently authenticated by the seal of the Masters' office: and the committee of the estate shall in the name and on behalf of the lunatic execute the lease when allowed upon the intending lessee executing a counterpart thereof (a).

Settled Land Act, 1882, s. 62. Where a tenant for life, or a person having the powers of a tenant for life under the Settled Land Act, 1882 (b), is a lunatic so found by inquisition, the committee of his estate may, in his name and on his behalf, under an order of the Judge in lunacy (c), exercise the powers of a tenant for life under the Act (d); and an order may be made on the petition of any person interested in the settled land or of the committee. The jurisdiction given by this section is expressly confined to cases where the person has been found a lunatic by inquisition and a committee appointed; but the powers of leasing conferred by the Act of 1882 can be exercised on behalf of the lunatic by the committee acting with the authority of the Judge under sect. 120 (h) of the Lunacy Act, 1890, and hence they can be exercised also in the case of

² Ch. 415; as to proof of unsoundness of mind: Re Lees (1884), 26 Ch. D. 496; as to ascertaining the value of the lunatic's property: Re Faircloth (1879), 13 Ch. D. 307.

⁽x) Re Wynne (1872), 7 Ch. 229. (y) Lunacy Act, 1891 (54 & 55) Vict. c. 27), s. 27 (1).

⁽z) Rule 10.

⁽a) See Lunacy Act, 1890, s. 124. Cf. Lawrie v. Lees (1881), 7 App. Cas. 19.

⁽b) 45 & 46 Vict. c. 38.

⁽c) Cf. sect. 108 of the Lunacy Act, 1890.

⁽d) Infra, p. 41.

the persons mentioned in sect. 116 (e) by the person appointed by the Judge (f). Where an infant is of unsound mind, but is not a lunatic so found, the powers of the Act of 1882 can be exercised on his behalf under sects. 59 and 60 (g).

When a committee proposes to effect a grant of a lease under sect. 62, he must see that there are trustees for the purposes of the Act of 1882, or, if necessary, procure their appointment (h), and he must obtain the sanction of the Judge in lunacy before serving them with notice under sect. 45 (i).

Provision is also made by the Settled Estates Act, 1877 (k), Settled for the exercise on behalf of lunatics of the powers conferred by 1877, s. 49. that Act (1). All powers given by the Act, and all applications to the Court under the Act, and consents to and notifications respecting such applications, may be executed, made, or given by, and all notices under the Act may be given to, committees on behalf of lunatics. But in the case of a lunatic tenant in tail no application to the Court, or consent to or notification respecting any application, may be made or given by the committee without the special direction of the Court. Since sect. 46 gives a tenant for life power of leasing without any application to the Court, it seems that the committee of a tenant for life may grant a lease subject to the restrictions of the section without the order of the Judge in lunacy required by sect. 62 of the Settled Land Act, 1882.

A lease granted by or to a lunatic personally can be avoided Leases by or if it appears that the other contracting party knew of his state personally. of mind, and took advantage of it (m). But if this is not proved, and especially if the contract, having been entered into by the other party fairly and in good faith, has also been executed and completed, and the property forming the subject-matter of the contract has been paid for and fully enjoyed, such contract cannot afterwards be set aside either by the lunatic or those who represent him (n).

(e) Supra, p. 11. (f) Re Baggs ([1894] 2 Ch. 416, n.), which seemed to decide the contrary, was distinguished in Re Sult ([1896] 1 Ch. 117). (g) Cf. Re Edwards (1879), 10 Ch. D. 605.

(h) Cf. Re Taylor (1883), 31 W. R.

(i) Re Ray's S. E. (1884), 25 Ch. D.

(k) 40 & 41 Vict. c. 18. (l) Infra, pp. 48, 49.

(m) Dane v. Kirkwall (1838), 8 C. & P. 679; Imperial Loan Co. v. Stone, [1892] 1 Q. B. 599. Browne v. Joddrell (1827), M. & M.

(n) Molton v. Camroux (1848), 2 Ex. 487, 503, 4 Ex. 17; Beavan v. M'Donnell (1854), 9 Ex. 309, 10 Ex. 184. See Campbell v. Hooper (1855),

A lease made by a lunatic during a lucid interval is valid, but it is incumbent on the person claiming under such a lease to show clearly that it was executed at such a time (o).

III. MARRIED WOMEN.

Summary.

The law as to leases of the property of a married woman may be summed up as follows: (1) under an express power to lease she can lease as a feme sole; (2) she can grant leases as a feme sole of property which is in equity her separate property; (3) she can grant leases as a feme sole of property which is her separate property under the Married Women's Property Act, 1882, and in some cases, at any rate, of property which is her separate property under the Married Women's Property Act, 1870; (4) with respect to her non-separate property she may, with the concurrence of her husband, create leases under the Fines and Recoveries Act, 1833; (5) her husband, where she is seised in fee, and he is entitled to possession in her right, may lease under the Settled Estates Act, 1877; (6) renewals of leases may be granted under the Infants' Property Act, 1830; (7) where the married woman is a limited owner, leases may be granted under the Settled Land Act, 1882, by the married woman alone if her interest is her separate property; otherwise by her and her husband jointly; (8) where the husband is entitled to a life estate in right of his wife, he may make leases under the Settled Estates Act, 1877; (9) leases of property in which the married woman has a limited interest may be authorized by the Court under the same Act; (10) a married woman who is tenant in tail may, with the concurrence of her husband, grant a lease under the Fines and Recoveries Act, 1833. But, while all these cases may occur, a married woman will, in practice, lease as a feme sole where she is the absolute owner of equitable or statutory separate property; or lease with the concurrence of her husband under the Fines and Recoveries Act, 1833; or lease as a limited owner under the Settled Land Act, 1882, either without or with her husband, according as her interest in the settled estate is, or is not, her separate property.

Leases under powers.

Where by a settlement or will a woman is expressly empowered

3 Sm. & G. 153; Baxter v. Portsmouth (a) Creagh v. Blood (1845), 2 Jo. & (1826), 5 B. & C. 170; Elliott v. Ince (1857), 7 D. M. & G. at p. 487.

to demise, she may do so during coverture (p), and the concurrence of her husband is not necessary (q).

Unless the power is expressly or by necessary inference restricted to leasing while sole (r), the married woman may exercise it although it was given to her when she was unmarried (s), or during a previous marriage (t). A power which provides that the donee may exercise it "notwithstanding coverture" may be exercised while the donee is sole (u). A lease made by a married woman under such a power need not be acknowledged by her under the Fines and Recoveries Act, 1833 (x). It has been held that under a power of leasing a married woman cannot lease to her husband (y).

A married woman who has property settled to her separate Equitable use, without restraint on alienation, may dispose of it as a feme sole(z). As regards such property she is freed from the disabilities of coverture, and invested with the rights and powers of a person who is sui juris (a). A lease granted by her operates as a direction to the trustees to convey or hold the estate according to the new trust created by such direction (b). Leases of such property need not be acknowledged under the Fines and Recoveries Act, 1833 (c).

separate property.

In many cases the property of a married woman is now made Statutory her separate property by statute, and she is able to dispose of it as a feme sole. By the Married Women's Property Act, 1882 (d), a woman married after the commencement of the Act i.e., 1st of January, 1883—is entitled to hold as her separate property, and to dispose of as a feme sole (e) all real and personal property which belongs to her at the time of marriage, or is

separate property: Married Women's Property Act. 1882, s. 2.

(p) Lady Travel's Case, cited in Hearle v. Greenbank (1749), 3 Atk. 711; Doe v. Eyre (1846), 3 C. B. 557, э С. В. 713.

(q) Sugden on Powers, 8th ed. 153. (r) Marquis of Antrim v. I), of

Buckinghum (1663), 1 Ch. Cas. 17. (s) Gibbons v. Moulton (1678),

Finch, 346.

(1) See Burnet v. Mann (1748), 1 Ves. Sen. 156.

(1) Doe v. Bird (1833), 5 B. & Ad. 695.

(x) 3 & 4 Will. 4, c. 74; Farwell on Powers, 2nd ed. 117.

(y) Due v. Gilbert (1843), 5 Q. B. 423,

(z) Francis ∇ . Wigzell (1816), 1 Madd. p. 261; Aylett v. Ashton (1835), 1 My. & Cr. 105.

(a) Per Lord Westbury in Taylor v. Meads (1865), 4 D. J. & S. 597. 604; Lord Hatherley in Pride v.

Bubb (1871), 7 Ch. p. 69. (b) Per Lord Westbury in Taylor v. Meads. See Allen v. Walker (1870), L. R. 5 Ex. 187.

(c) Taylor v. Meads, 4 D. J. & S. 597; Adams v. Hamble (1861), 12 Ir. Ch. R. 102.

(d) 45 & 46 Vict. c. 75.

(e) See sect. 1; Hope v. Hope, [1892] 2 Ch. p. 342; Re Cuno (1889), 43 Ch. D. p. 16.

Sect. 5.

acquired by, or devolves upon, her after marriage; and a woman married before the commencement of the Act is entitled to hold and dispose of, in manner aforesaid, as her separate property, all real and personal property her title to which, whether vested or contingent, and whether in possession, reversion, or remainder, accrues after the commencement of the Act; and the application of the Act depends on when the title accrues, not upon when it falls into possession (f). It follows that in all cases where the married woman's property is separate property under these provisions (q) she has as full a power of leasing as though the disability of coverture did not exist, and no consent of her husband or acknowledgment of the deed is necessary (h). Similarly a married woman can now accept a lease, which will vest in her as her separate property, and she will be liable on the contract contained in the lease to the extent of her separate estate (i).

Non-separate property.
Fines and Recoveries Act, 1833, s. 77.

The statutory rule with regard to the disposition of the non-separate property of a married woman is contained in sect. 77 of the Fines and Recoveries Act, 1833 (k). A married woman, in every case except that of being tenant in tail, for which provision is otherwise made by the Act (l), may by deed dispose of lands of any tenure as fully and effectually as she could do if she were a feme sole, except that no such disposition is valid and effectual unless the husband concurs in the deed by which the same is effected, nor unless the deed is acknowledged by her, upon her executing the same, as her act and deed, before a Judge of the High Court (m), a Judge of a County Court (n), or a perpetual or special commissioner (o). Under this section a married woman can, with the concurrence of her husband, grant a lease of any unsettled property, and, with the exception of an estate tail, of any settled property to the extent of her interest.

Leases by husband.

Where a husband is entitled to the possession or to the receipt of the rents and profits of any unsettled estates (p) in

(f) Reid v. Reid (1886), 31 Ch. D. 402.

(h) Cf. Re Drummond and Davie's Contract, [1891] 1 Ch. 524.

(i) See M. W. P. A. 1893 (56 & 57

Vict. c. 63), s. 1. (k) 3 & 4 Will. 4, c. 74.

(l) Infra, p. 18.

(n) Judicature Act, 1873, s. 16. (n) County Courts Act, 1888, s. 184.

(v) County Courts Act, 1882, s. 7.

(p) The earlier part of this 46th section enables a husband seised of settled estates in right of his wife to grant leases; infra, p. 17.

⁽g) A more limited provision in favour of married women was made by the M. W. P. A. 1870, to which it may be still necessary to refer in the case of women married after 9th Aug. 1870, and before 1st Jan. 1883.

right of a wife who is seised in fee, he may, under sect. 46 of Settled the Settled Estates Act, 1877 (q), without any application to the $\frac{1877}{1877}$, s. 46. Court, demise the same or any part thereof, except the principal mansion house and the demesnes thereof, and lands usually occupied therewith, subject to the restrictions imposed by the section (r). The lease will be valid against the husband, and against his wife and all persons claiming through or under the wife (s).

Estates Act,

Where a feme covert might, in pursuance of any contract or Renewal of agreement, if not under disability, be compelled to renew any lease, she may, by direction of the Court, upon application by herself or any person entitled to such renewal, accept a surrender of the lease and execute a new lease; and where a feme covert is sect. 12. entitled to any lease for life or years a surrender of the lease and an acceptance of a new lease may be ordered by the Court as in the case of an infant (u).

lease. Infants' Property Act, 1830 (t), s. 16.

If a married woman is entitled to a limited interest in possession in land, a lease may be granted under the Settled Land Act, 1882 (x). Where, if she had not been a married woman, she separate or would have been a tenant for life, or would have had the powers of a tenant for life under the Act, and she is entitled for her separate use, or is entitled under any statute, passed or to be passed, for her separate property, or as a feme sole, then she, without her husband, has the powers of a tenant for life under Hence where the interest of a married woman under a settlement is her separate property, whether in equity or by statute, and is of a nature to confer, apart from coverture, the powers of a tenant for life, the married woman can exercise by herself the powers of leasing conferred on a tenant for life under the Act (y). Where the married woman has such an interest, Sub-sect. (3). but it is not her separate property, then she and her husband together have the powers of a tenant for life. A restraint on anticipation will not prevent the exercise by her of the statutory power of leasing (z).

Limited interest, whether non-separate. Settled Land Act, 1882, s. 61, sub-s. (2).

Where a husband is entitled, in right of his wife, to the Settled possession or to the receipt of the rents and profits of any settled estates for an estate for any life, or for a term of years

Estates Act, 1877, s. 46.

⁽q) 40 & 41 Vict. c. 18.

⁽r) Infra, p. 48.

⁽⁸⁾ Sect. 47.

⁽t) 11 Geo. 4 & 1 Will. 4, c. 65.

⁽u) Supra, p. 9.

⁽x) 45 & 46 Vict. c. 38.

⁽y) Infra, p. 41; and see subsect. (4).

⁽z) Sub-sect. (6).

determinable with any life or lives, or for any greater estate, under a settlement made since November 1st, 1856 (sect. 57), he may, unless the settlement contains an express declaration to the contrary, make leases under sect. 46 of the Settled Estates Act, 1877 (a), subject to the restrictions imposed by the section (b).

Settled Estates Act, 1877, s. 4.

Leases of settled estates in which married women have limited interests may also be authorized by the Chancery Division of the High Court under sect. 4 of the Settled Estates Act, 1877. That Act provides that where a married woman applies to the Court, or consents to an application to the Court, she must first be separately examined (c), by the Court, or by some solicitor appointed by the Court, apart from her husband, touching her knowledge of the nature and effect of the application, and it must be ascertained that she freely desires to make or consent to such application: but separate examination is not now necessary where the interest is the separate property of the married woman under the Married Women's Property Act, 1882 (d). examination, where necessary, married women may make or consent to any application, whether they be of full age or infants (e). The exercise of the powers of the Court under the Act of 1877 is not prevented by the existence of a restraint on anticipation. The Court has dispensed with examination where the proposed lease was clearly for the benefit of all parties, and to insist on examination would cause great delay (f); also where the interest of the married woman was remote (g), or where she had married after the filing of the petition (h).

Sect. 50.

Sect. 52.

A married woman who is tenant in tail of lands may grant a lease under the Fines and Recoveries Act, 1833 (i), but the concurrence of her husband is necessary to give effect to the lease, and the deed must be acknowledged (k).

Tenants in tail.

⁽a) 40 & 41 Vict. c. 18.

⁽b) Infra, p. 48.

⁽c) As to the examination, see sects. 50 and 51 of the S. E. Act, 1877.

⁽d) Riddell v. Errington (1884), 26 Ch. D. 220; Re Robinson's S. E. (1894), 38 Sol. Journ. 325. Cf. Re Smith's Estate (1887), 35 Ch. D. p. 596.

⁽e) A married woman under age must be separately examined. It is not enough for her to consent as an infant by her guardian specially appointed for the purpose: Re Broad-

wood's S. E. (1872), L. R. 7 Ch. 323.

⁽f) Re Halliday's S. E. (1871), L. R. 12 Eq. 199; Re Thorne's S. E. (1872), 20 W. R. 587.

⁽g) Re Lord De Tabley's S. E. (1863), 11 W. R. 936. See Re E. of Kilmorey's S. E. (1877), 26 W. R.

<sup>514.
(</sup>h) Re Marshall's S. E. (1872),
L. R. 15 Eq. 66.

⁽i) 3 & 4 Will. 4, c. 74; infra, p. 40.

⁽k) Sect. 40.

Leases of the freehold property of the wife, not her separate Leases of property, made by her alone (otherwise than under the provisions holds not in of the above statutes or of an express power), are void (l). If pursuance of made either by husband and wife or by the husband alone (m), they are valid, to the extent of the term, during the joint lives of husband and wife (n). If not by deed, such leases (l) on the death of the husband become void as against the wife surviving and persons claiming under her (o). If made by deed, they are voidable by the widow on the death of the husband (p), and a lease which she avoids will be void as to her ab initio (q); but if, after her husband's decease, she accepts rent due after that event, or otherwise recognizes the lease as subsisting, it will become good and unavoidable (r). And even if the widow, without doing any act either to affirm or to disaffirm the lease, allows the tenant to continue in possession during her lifetime, it seems that the lease will be good and subsisting up to her death; and the rent which accrued due during her lifetime is recoverable by her executors (s). If the husband survives, and (having had issue by his wife born alive, that might by possibility inherit the estate as her heir) becomes tenant by the curtesy, a lease by the husband, or by the husband and wife, will be good for the whole term, provided the husband lives so long, but upon his death will become void (t).

A lease expressed to be by husband and wife of freeholds belonging to the wife, executed under a power of attorney given by husband and wife, was before January 1st, 1882, the lease of the husband only (u), since the power of attorney was void as regards the wife. But a married woman has now power to

(1) See judgment in Goodright v. Struphan (1774), Cowp. at p. 203.

(m) See 2 Wms. Saund. 180 a, note. in case the lease is made by the husband alone, the reversion is in him, and he alone can distrain for rent: Harcourt v. Wyman (1849), 3 Ex. 817.

(u) Bateman v. Allen (1594), Cro. Eliz. 437; Wiscot's Cuse (1599), 2 Rep. at p. 61 b; Jordan v. Wikes (1614), Cro. Jac. 332; Toler v. Slater (1867), L. R. 3 Q. B. 42.

(a) As to leases by husband and wife, see Walsal v. Heath (1579), Cro. Eliz. 656; Turney v. Sturges (1553), Dyer, p. 91 b; Parry v. Hindle (1809), 2 Taunt. p. 181. As to leases by the husband alone, see Harvy v. Thomas (1589), Cro. Eliz. 216.

(p) Smallman \forall . Agborow (1616), Cro. Jac. 417.

(q) See Butler and Barker's Case (1591), 3 Rep. 28.

(r) Jordan v. Wikes (1614), Cro. Jac. 332; Greenwood v. Tyber (1619), ib. 563; Doe v. Weller (1798), 7 T. R. 478. See Toler v. Slater (1867), L. R. 3 Q. B. 42; Bac. Abr. (C.) 645.

(s) See Toler v. Slater, supra, at p. 46.

(t) Miller v. Maynwaring (1635), Cro. Car. 397.

(u) Gardiner v. Norman (1622), Cro. Jac. 617

wife's freestatutes.

appoint an attorney for the purpose of executing any deed which does not require to be acknowledged by her (x).

Underleases.

Underleases of the leasehold property of the wife, not being her separate property, may be made during the marriage by the husband in his own name, to commence either during his life or after his decease, and such an underlease will be valid though the wife should survive (y), and the rent, if reserved to the husband, formerly went to the representatives of the husband after his death (z). And it has been held that a covenant by the husband to grant an underlease binds the estate after his death (a). If the husband underleases part of the property comprised in a lease held by his wife, the wife surviving will be entitled to the rest of the property (b). Formerly the husband could dispose of a term vested in his wife as personal representative (c), but the law in this respect seems to have been altered by the Married Women's Property Act, 1882 (d).

Leases to married women.

A lease granted to a married woman might formerly be disaffirmed by her husband, but it vested in her until he expressed his dissent (e). After his death, however, the wife or her representatives might avoid the lease, unless after the date of his death she had assented to it (f). But, having regard to the powers enjoyed by married women under the Married Women's Property Acts, a married woman can now effectually take a lease without her husband's concurrence, and she will be liable to the extent of her separate property under the covenants in the lease.

IV. ALIENS.

Former law.

At common law alien enemies, since they were disabled from maintaining any action or getting anything within the realm (q), could neither make nor take leases of any kind of property. An alien friend could acquire and hold personal property, other than leaseholds, but the Crown, upon office found, could seize lands

(x) Conveyancing Act, 1881, s. 40; Wolstenholme's Conv. Acts, 8th ed. p. 97.

(y) Anon. (1592), Poph. 4. See Hurbin v. Chard (1595), ib. p. 97; Harbin v. Barton (1595), Moore, 395; Grute v. Locroft (1591), Cro. Eliz. 287; Bac. Abr. (C.) 648.

(z) Blaxton v. Heath (1619), Poph. 145. See now Conv. Act, 1881, s. 10.

(a) Steed v. Cragh (1714), 9 Mod. 43; but this is doubtful. See Druce

v. Denison (1801), 6 Ves. 385.

(b) Sym's Case (1584), Cro. Eliz. 33. (c) Thrustout v. Coppin (1772), 2 W. Bl. 801.

(d) Sects. 1, 24; Wms. on Executors, 9th ed. p. 834.

(e) See judgment in Swaine v. Holman (1617), Hob. 204; Co. Litt. 3 a.

(f) Co. Litt. 3 a. (g) See Calvin's Case (1

(g) See Calvin's Case (1609), 7 Rep. p. 17 a.

and houses acquired by him, save only a house acquired for his necessary habitation (h). But under the Naturalization Act, 33 Vict. c. 14. 1870 (i), real and personal property of every description may be taken, acquired, held, and disposed of by an alien in the same manner in all respects as by a natural-born British subject (k), and since no qualification is imposed on the term "aliens" such as that in the earlier enabling statute, 7 & 8 Vict. c. 66, s. 5 (l), it would seem that alien friends and enemies alike can now make and take leases like British subjects.

V. CONVICTS.

By virtue of the Forfeiture Act, 1870, a convict (i.e., any Convicts. person against whom judgment of death or of penal servitude 33 & 34 Vict. has been pronounced upon any charge of treason or felony) is incapable, while undergoing his sentence, of alienating any property, or of making any contract save as in the Act provided. He is consequently incapable of making any lease, and should a lease be made to him it would, like all his other property, real Sect. 9. and personal, vest in the administrator appointed under the Act(m). But the administrator has absolute power to let any part of the property of the convict as to him shall seem fit. The Sect. 12. disabilities of the Act do not operate while the convict is lawfully Sect. 30. at large under any licence.

c. 23, ss. 6, 8.

VI. CORPORATIONS.

Apart from any restrictions imposed by legislation and the Leases by a provisions of their own constitutions and bye-laws, corporations are at liberty to alienate their lands for any interest consistent with their own estate (n). But since, as a general rule, corporations can only contract under seal (o), leases by or to them must

corporation.

- (h) Co. Litt. 2 b; 1 Bl. Comm. 360. See *Jevons* v. *Harridge* (1667), I Saund. p. 7.
 - (i) 33 Vict. c. 14.
- (k) Sect. 2. The section is not retrospective: Sharp v. St. Sauveur (1871), L. R. 7 Ch. 343.
- (!) The phrase used there was "alien being the subject of a friendly state." The statute is repealed: 33 Vict. c. 14.
- (m) The property revests in the convict upon his ceasing to be sublect to the operation of the Act, or m his heir or legal personal repre-

sentatives, or other persons entitled thereto (sect. 18). An interim curator may be appointed by justices of the peace in case no administrator is appointed (sect. 21), with power to "manage and administer" the property of the convict, but with no express power to let (sect. 24).

(n) Mayor of Colchester v. Lowten (1813), 1 V. & B. 226, 244; Smith v. Barrett (1664), 1 Sid. p. 162.

(a) See per Rolfe, B., in Mayor of Ludlow v. Charlton (1840), 6 M. & W. at p. 823; Cooch v. Goodman (1842), 2 Q. B. 580.

be made by deed, sealed with their common seal (p). Although, however, leases by corporations not so made are void, yet if the tenant has actually occupied and paid rent under the void instrument, and the corporation has received such rent, an implied tenancy from year to year may exist upon such of the terms of the void instrument as are applicable to that kind of tenancy, and an action may be maintained by the corporation for a breach of such terms (q). And wherever it would occasion very great inconvenience or tend to defeat the very object for which the corporation was created, the rule requiring the contract of the corporation to be under seal will not prevail; hence the doing of acts very frequently recurring, or too insignificant to be worth the trouble of affixing the common seal, are established exceptions (r). Thus a licence to use a graving dock belonging to a corporation for the purpose of repairing a ship need not be under the seal of the corporation (s).

If a contract not under seal for a lease by a corporation has been partly performed, specific performance of such contract will be decreed (t). In the absence of part performance, a contract made by an agent on behalf of a corporation, and requiring to be under seal, cannot be enforced unless either the agent was appointed under seal, or the contract has been ratified under seal before the offer of the other party has been withdrawn (u).

A power given by private Act of Parliament to a corporation

- (p) Finlay v. Bristol and Exeter Ry. Co. (1852), 7 Ex. 409. Per Lord Ellenborough in Rex v. Chipping Norton (1804), 5 East, 239 (the demise in the case was, however, of an incorporeal hereditament, and in Rex v. North Duffield (1814), 3 M. & S. 247, the decision was expressly put on this ground). See Predyman v. Wodry (1606), Cro. Jac. at p. 110. As to the liability of a corporation for use and occupation, see Lowe v. L. & N. W. Ry. Co. (1852), 18 Q. B. 632.
- (q) Wood v. Tate (1806), 2 B. & P. (N. R.) 247; Ecclesiastical Commissioners v. Merral (1869), L. R. 4 Ex. 162.
- (r) Church v. Imperial Gas Light Co. (1838), 6 A. & E. at p. 861; approved in Mayor of Ludlow v. Charlton (1840), 6 M. & W. at p. 822.
 - (8) Wells v. Mayor, &c., of Hull

- (1875), L. R. 10 C. P. 402.
- (t) Marshall v. Corp. of Queen-borough (1823), 1 S. & S. 520; Steevens' Hospital v. Dyas (1864), 15 Ir. Ch. 405, 420; Crook v. Corp. of Seaford (1871), 6 Ch. 551; Fry on Spec. Perf., 4th ed. p. 284; but see Hunt v. Wimbledon Local Board (1878), 4 C. P. D. 48. As to estoppel resulting from part performance, see Fishmongers' Co. v. Robertson (1843), 5 M. & Gr. 131; Mayor of Kidderminster v. Hardwick (1873), L. R. 9 Ex. 13.
- (u) Mayor of Oxford v. Crow, [1893] 3 Ch. 535; Athy Guardians v. Murphy, [1896] 1 Ir. R. 65. Consider, however, as to ratification, Bolton Partners v. Lambert (1889), 41 Ch. D. 295; followed in Re Portuguese Mines, Limited (1890), 45 Ch. D. 16, and criticized in Fry on Spec. Perf., 4th ed. at p. 677.

to sell its property has been held to authorize the grant of a building lease with an option of purchase (x).

Corporations (y) may take leases of land of moderate and usual Leases to length, such as a husbandry lease for twenty-one years (z). a lease for a term of unusual duration—e.g., for 100 years (a), or, perhaps, even for eighty-one years (b)—no licence in mortmain having been obtained, may incur the penalty of forfeiture, on the ground that the land is brought into mortmain under colour of a lease (c). Such a lease, however, is not void, but only voidable on entry of the lord or the Crown for the forfeiture.

(a) Ecclesiastical Corporations.

Ecclesiastical corporations are either aggregate, consisting of several persons, as the dean and chapter of a cathedral, or sole, consisting of one person, as a bishop or incumbent.

Leases granted by a spiritual corporation sole without confir- Leases by mation were at common law valid during the life or tenure of office of the lessor (d). Upon his death or other avoidance they became either voidable or absolutely void, according as the lessor had the whole or only a qualified fee simple (e). In the latter case, as where the lease had been made by a vicar, the acceptance of rent by the successor would not set up the lease, but might create a tenancy from year to year (f). But a bishop

spiritual corporation sole at common law.

(x) Re Female Orphan Asylum

(1867), 15 W. R. 1056.

(y) As to the necessity of correctly describing the corporation in the lease, see R. v. Haughley (1833), 4 B. & Ad. p. 655; Mayor of Lynne Regis' Case (1613), 10 Rep. 120 a; Croydon Hospital v. Farley (1816), 6 Taunt. 467. Any requirements specified in a statute under which the lease is made must be strictly complied with: Kent Coast Ry. Co. v. L. C. & D. Ry. Co. (1868), 3 Ch. 656.

(z) See Jesus Coll. v. Gibbs (1835),

1 Y. & C. Ex. 145, 147.

(a) Rowles v. Muson (1612), Brown. & G., Part. II. p. 197. Per Tanfield C.B., in Cotton's Case (1613), Godb. p. 192.

(b) Per Bridgman, C.J., in Hemminy v. Brubazon (1660), O. Bridg. Rep. (by Bannister), p. 7. See 1 Platt on Leases, 541. It has, however, been suggested that a lease to a corporation for ninety-nine years is valid, "for it is very usual": Vin. Abr. "Mortmain," p. 485.

(c) Stat. 7 Edw. 1, stat. 2, c. 1; now the Mortmain and Charitable Uses Act, 1888 (51 & 52 Vict. c. 42). For exemptions from Part I. of the Act, see Tudor on Charitable Trusts, 1889, p. 429. But in Vigers v. Dean and Chapter of St. Paul's (1849), 14 Q. B. p. 919, the Court said they had "not been able to find any authority for the proposition that the Statutes of Mortmain forbid a corporation to hold that which is not in itself perpetual."

(d) Co. Litt. 44 a; 2 Blackst. Comn. 318; Price v. Williams (1836), 1 M. & W. p. 13; 1 Platt on Leases,

318.

(e) Bac. Abr. (H.) 764.

(f) Doe v. Collinge (1849), 7 C. B. 939; infra, p. 95.

has the whole fee, and a lease by him is voidable only. Where a lease by a bishop, which has been granted in consideration of the surrender of a prior lease by deed-poll, has been avoided by the successor, the first lease is not revived by such avoidance (g).

But with the confirmation required by law, i.e., in the case of a bishop, with the confirmation of his dean and chapter, and in the case of a parson or vicar, with the confirmation of his patron and bishop, these corporations might grant, for lives or years without any limitation, leases which would bind their successors (h).

Confirmation.

A patron might confirm explicitly by deed or writing, or by consequence of law; as, for instance, where a parson made a lease for years to the patron, who granted or assigned it over to another (i). It was not material whether the confirmation was before or after the making of the lease, provided it took place in the lifetime of the parties to the lease (k).

Leases by spiritual and eleemosynary corporations aggregate. Spiritual and eleemosynary corporations aggregate might make leases for lives or years without limitation binding on their successors (l) without the necessity of confirmation. A lease by the head of the corporation requires the consent of a majority only of the other members (m).

These common law powers were partly extended and partly restricted by statutes of Henry VIII. and Elizabeth, but at the present day leases are usually granted under powers conferred by a series of statutes of Victoria.

Under the enabling statute, 32 Hen. 8, c. 28 (n), an ecclesiastical corporation sole (o) having any estate of inheritance in right of his church, excepting a parson or vicar (p), may make leases which will be effectual against the lessor and his

The enabling statute.

32 Hen. 8, c. 28, ss. 1, 2, 4.

Corporations sole (except parsons and

- (g) Doe v. Bridges (1831), 1 B. & Ad. 847.
- (h) Co. Litt. 44 a; B. of Salisbury's Case (1604), 10 Rep. 58 b; Bac. Abr. (G. 2) 742.
- (i) Hodges v. Neucomen (1588), cited 5 Rep. 15; Bac. Abr. (G. 2) 753.

(k) Bac. Abr. (G. 4) 758.

- (1) Bac. Abr. (G. 1) 741; Co. Litt. 44 a.
- (m) See 33 Hen. 8, c. 27, which provides that every statute made by any founder of any hospital, college, or other corporation whereby the lease of the governor with the assent of the majority of such of the same corporation as shall have voice of

assent to the same at the time of such lease should be hindered by the lesser number of such corporation, contrary to the common law, should be void.

(n) Repealed by the Settled Estates Act, 1856 (19 & 20 Vict. c. 120), s. 35, except so far as relates to leases made by persons having an estate in right of their churches.

(a) E.g., a prebendary (Watkinson v. Man (1585), Cro. Eliz. 349); or the chancellor of a cathedral (Bisco v. Holte (1664), 1 Lev. 112); or a bishop. See Bac. Abr. (E.) 686.

(p) As to a perpetual curate, see Doe v. Thomas (1839), 9 A. & E. 556.

successors, of lands, tenements, or hereditaments commonly let vicars) may for twenty years next before such leases (q), for terms not exceeding twenty-one years or three lives (r) from the day of twenty-one making thereof; but such leases (s) must be made by indenture; three lives. must reserve yearly during the whole term the most accustomed rent or more; and must not be made without impeachment of waste, or while any old lease of the same premises is subsisting, unless such lease be expired, surrendered, or ended within one year next after the making of the new lease. Land formerly let under one lease may be demised under several leases, provided the total of the several rents is not less than the amount of the ancient single rent (t).

lease lands. &c., for years, or

The leases authorized by the foregoing statute can be made by a corporation sole without confirmation (u). On the other hand the restraining statutes of Elizabeth abridged the common law powers of leasing even with confirmation. Under 1 Eliz. c. 19, s. 4, leases made by any archbishop or bishop, and under 13 Eliz. c. 10, s. 3 (x), leases made by any master and fellows of any college, dean and chapter of any cathedral or collegiate church, master or guardian of any hospital (y), parson, vicar, or any other having any spiritual or ecclesiastical living, of any hereditaments belonging to their spiritual promotion, exceeding conditions. twenty-one years (z), or three lives from the time at which they are made (a), or not reserving the accustomed yearly rent (b), or more, payable yearly during the term, are void. Notwithstanding this express statutory declaration, it has been held that, since the statute was made for the benefit of the successor, the lease is valid during the life of the corporation sole, or of the head of the corporation aggregate, by whom it was

The restraining statutes. 1 Eliz. c. 19. s. 5; 13 Eliz. c. 10, s. 3. Leases by spiritual corporations must not exceed twenty-one years and must observe certain

(q) Doe v. Yarborough (1822), 1Bing. 24; Bac. Abr. (E.) 712.

see Maydalen Coll. Case (1616), 11 Rep. 76 a.

⁽r) The term of three lives cannot be extended by the insertion of a covenant to put in new lives as the old ones drop: Moore v. Clench (1875), 1 Ch. D. 447.

⁽s) See Co. Litt. 44 a. As to leases of tithes, tolls, or other incorporeal hereditaments, see 5 Geo. 3, c. 17, 8. I.

⁽t) 39 & 40 Geo. 3, c. 41.

⁽u) B. of Salisbury's Case (1614), 10 Rep. 58 b.

⁽x) As to the extent of the Act,

⁽y) As to leases by hospitals, see 14 Eliz. c. 14 and 39 Eliz. c. 5.

⁽z) A lease for a less term or number of lives is good: Carter and Claycole's Case (1590), 1 Leon. **306.**

⁽a) In 1 Eliz. c. 19, "from such time as any such lease shall begin."

⁽b) See Doe v. Yarborough (1822), 1 Bing. 24. And as to ancient rents which have become divided, see 39 & 40 Geo. 3, c. 41.

granted (c), and is only voidable by his successor, though it may be confirmed by his acceptance of rent from the lessee (d). This laxity of construction, however, was disapproved of, and not allowed, in a modern case of an eleemosynary corporation aggregate without a head (e); it being held that leases contrary to the statute are void *ab initio*. And it may be anticipated that the same strictness would now be extended to such leases granted by any eleemosynary or ecclesiastical corporation aggregate. It is to be observed, however, that if any rent is reserved on a void lease, and such rent is accepted, a tenancy from year to year on such of the terms of the lease as are applicable to that tenancy will be created (f).

Except leases not exceeding forty years of houses in towns, &c. 14 Eliz. c. 11, ss. 17, 19 (g).

The foregoing restrictions do not extend to leases for terms not exceeding forty years of houses or of grounds thereto appertaining, situate in any city, borough, town corporate, or market town, or the suburbs of any of them; provided the house is not the capital or dwelling-house of the lessors, and the grounds thereto belonging do not exceed ten acres; and provided the leases are made subject to the conditions specified in the statute.

The result of the above statutes is that a lease by a corporation sole, as a bishop, if not prohibited by the statutes of Elizabeth, must, to avoid the necessity of confirmation, be made in accordance with 32 Hen. 8, c. 28. Otherwise it is made under the common law power and requires confirmation.

Concurrent leases restrained.

A concurrent lease, the term of which extends beyond the term of the prior lease, is a lease in reversion, and cannot be made under 32 Hen. 8, c. 28, unless the old lease expires or is surrendered within a year of the making of the new lease. The statute 13 Eliz. c. 10, does not prohibit leases in reversion, which could therefore still be made at common law, but the omission was cured by 18 Eliz. c. 11, s. 1, which allowed a new lease only within three years of the expiry or surrender of the old one. Thus a lease by a bishop made more than one and less than three years before the termination of the old one was

⁽c) 2 Shep. Touch. 283; Co. Litt. 45 a; Hunt v. Singleton (1598), referred to in Lincoln Coll. Case, 3 Rep. 60 a; B. of Salisbury's Case (1614), 10 Rep. 58 b; Roe v. Archb. of York (1805), 6 East, p. 103.

⁽d) Pennington v. Cardale (1858), 3 H. & N. p. 666. See per Holroyd, J., in Edwards v. Dick (1821), 4

B. & A. 217; per Bayley, J., in Doe v. Bancks (1821), ib. p. 407; Doe v. Taniere (1848), 12 Q. B. 998.

⁽e) Magdalen Hospital v. Knott (1879), 4 App. Cas. 324.

⁽f) See infra, p. 94.
(g) Numbered as sects, 5 and 7 in Statutes Revised.

good if confirmed by the dean and chapter (h). The statute 14 Eliz. c. 11, provides that no lease shall be made under it in reversion (i), but it is to be read with 13 Eliz. c. 13 and 18 Eliz. c. 11, and a new lease of a town house for twenty-one years made within three years of the termination of an old one for forty years is good (k).

Although the above statutes have not been repealed, the Statutes of leases of ecclesiastical corporations have been put on a new footing by statutes passed in the reign of her late Majesty Queen Victoria.

Victoria.

By the Ecclesiastical Leasing Act, 1842, the incumbent of any Leases by benefice (1), with the consent of the patron and bishop, and, where the lands are copyhold, and a lease cannot be effectually made without his licence, with the consent of the lord of the manor, such consents being testified in the manner mentioned in of patron and the Act, may lease by deed any part of the glebe lands, or other lands belonging to such benefice (m) (except the parsonage house, &c., and at least ten acres of glebe, where there is so much glebe within five miles of the parsonage house), for any term not exceeding fourteen years, or twenty years if the lessee is to execute improvements; subject to the observance of certain conditions (n).

iucumbents. 5 & 6 Vict. c. 27, s. 1. Incumbents, with consent bishop, may lease glebe for fourteen or twenty years.

After this statute an incumbent could still exercise his common law power of leasing, subject to confirmation by the patron and bishop, and a lease so granted was valid even though it did not observe the requirements of the Act, provided it complied with the restrictions of the statutes of Elizabeth (0). subsequent Acts the common law power has been abolished (p).

The statutes of Elizabeth incidentally prohibited mining Mining and leases, even where the necessary consents were obtained; for building leases. the opening of new mines is waste, and waste is an alienation not authorized by the statute (q). This was rectified, and at the

⁽h) Co. Litt. 45 a.

⁽i) Hunt v. Singleton (1597), Cro. Eliz. 564.

⁽k) Vivian v. Blomberg (1836), 3 Bing. N. C. 311; Grumbrell v. Roper (1820), 3 B. & A. 711.

⁽¹⁾ See sect. 15.

⁽m) Including lands vested in trustees in trust for the incumbent m such a manner that the net income, or three-fourths at least of the net

income, shall be payable for the exclusive benefit of such incumbent; but the trustees must be made parties to and execute the lease: sect. 13.

⁽n) See Jenkins v. Green (No. 2) (1859), 27 Beav. 440.

⁽v) Jenkins v. Green (No. 3) (1859), 28 Beav. 87; 1 De G. F. & J. 454.

⁽p) Infra, p. 29.

⁽q) Ecclesiastical Commissioners v. Wodehouse, [1895] 1 Ch. 552.

same time power was given to grant building leases and other leases for long terms, by the Ecclesiastical Leasing Act, 1842.

Any ecclesiastical corporation, aggregate or sole (r) (except any college or corporation of vicars choral, priest vicars, senior vicars, custos and vicars, or minor canons, and any ecclesiastical hospital or the master thereof), with the consent of the Ecclesiastical Commissioners for England, and also in the case of a lease made by any incumbent of a benefice, with the consent of the patron thereof, and in the case of copyholds where the lease could not be made without the licence of the lord, with the consent of the lord of the manor, such consents to be testified in each case as in the Act is mentioned (s), may, by deed, grant building, repairing, or improving leases for any term not exceeding ninety-nine years, and leases of mines or quarries, running water, way-leaves and other like easements, for any term not exceeding sixty years; subject to the observance of the

conditions and restrictions mentioned in the Act.

More generally it is provided by the Ecclesiastical Leasing Act, 1858, that in any case in which it shall be made to appear to the satisfaction of the Ecclesiastical Commissioners that all or any part of the property of any ecclesiastical corporation, by the last-mentioned Act authorized to be leased, might, to the permanent advantage of the estate or endowments belonging to such corporation, be leased in any manner, any ecclesiastical corporation, aggregate or sole (except the corporations excepted in the said Act (t)), with such consents as in the said Act are mentioned, and with the approval of the Commissioners, to be testified by deed under their common seal, may lease all or any part of the lands, houses, mines, minerals or other property belonging to such corporation, either in consideration, or partly in consideration, of premiums or not, or for such other considerations, for such term or terms, and under and subject to such covenants, stipulations, conditions, and agreements on the part of the lessee, and generally in such manner as the Commissioners shall under the circumstances of each case think proper (u).

This Act and the previous Act do not apply to the Isle of Man (v).

(s) Sects. 21-27.

With certain consents any ecclesiastical corporation may grant building leases for ninety-nine years: leases of running water, easements or mines for sixty years.

5 & 6 Vict.

ss. 1—9, 18,

c. 108,

20-32.

21 & 22 Vict. c. 57, s. 1. Or may lease in such manner as the Ecclesiastical Commissioners shall direct.

⁽r) In England or Wales, or the Channel Islands: sect. 32. See 37 & 38 Vict. c. 96.

⁽t) Supra.

⁽u) As to contracts for leases and surrenders, see sect. 4.

⁽v) 29 & 30 Vict. c. 81.

The common law power of leasing, which, as already pointed out, had not been touched by the enabling statute, 5 & 6 Vict. c. 27, has been abolished as regards prebendaries and incumbents whose title accrues after 6th August, 1861. Under the Ecclesiastical Leasing Act of 1861 (24 & 25 Vict. c. 105), it is not lawful for a prebendary of any prebend (not being a prebend of any cathedral or collegiate church), rector, vicar, perpetual curate or incumbent, who, after the passing of the Act (6th August, 1861), may become possessed of, or entitled to any manors, lands, tenements or hereditaments belonging to any ecclesiastical benefice in England, to make any grant by copy of court-roll or lease of Acts. any such manors, lands, tenements, or hereditaments, in consideration of any fine, premium or foregift, but the same may, by any rector, vicar, perpetual curate, or incumbent after the passing of this Act, be leased under the provisions of the statutes 5 & 6 Vict. c. 27; 5 & 6 Vict. c. 108; or 21 & 22 Vict. c. 57. By the Ecclesiastical Leasing Act of 1862 (25 & 26 Vict. c. 52), the prohibition was extended to all leases of such manors, lands, tenements and hereditaments made for any longer term, or in any other way than according to the provisions of the three statutes just mentioned.

common law power of leasing.

Abolition of

24 & 25 Vict, c. 105; 25 & 26 Vict. c. 52, No lease by any future prebendary, rector, &c., ta be valid unless made in pursuance of certain

Various restrictions have been imposed by modern statutes on Further the letting of ecclesiastical property: as to the letting of residences attached to benefices, see 1 & 2 Vict. c. 106, s. 59; as to land acquired under the Episcopal and Capitular Estates Act, 1851 (14 & 15 Vict. c. 104), see sect. 9 of that Act; as to land acquired under the Ecclesiastical Leasing Act, 1858 (21 & 22 Vict. c. 57), see sect. 9 of that Act; as to lands assigned as the endowment of a see under the Ecclesiastical Commissioners Act, 1860 (23 & 24 Vict. c. 124), see sect. 8 of that Act; and as to leases by a dean and chapter, see 31 & 32 Vict. c. 114, s. 9.

restrictions.

The renewal of leases is regulated by the Ecclesiastical Leases Renewal of Act, 1836, which, as explained by 6 & 7 Will. 4, c. 64, prohibits 6 & 7 Will. 4, any ecclesiastical corporation, sole or aggregate, from granting c. 20, s. 1. any new lease, by way of renewal of any lease which has been previously granted for two or more lives, until one or more of the persons for whose lives such lease has been made shall die, and then only for the surviving lives or life, and for such new life or lives as, together with the life or lives of such survivor or survivors, shall make up the number of lives, not exceeding three in the whole, for which such lease has been originally made.

Sect. 4.

Sect. 1.

Leases to occlesiastical persons.

1 & 2 Vict.
c. 106, s. 28.

Beneficed clergy not to occupy more than eighty acres of land without permission of bishop.

Leases originally granted for forty years may be renewed after fourteen years have expired; leases for thirty years, after ten years; and leases for twenty-one years, after seven years. But where it is certified that for ten years past such has been the usual practice (such practice in the case of a corporation sole having commenced prior to the time of the person for the time being representing such corporation), leases may be renewed at shorter periods. Leases granted for terms of years cannot be renewed for lives.

The granting of occupation leases to beneficed clergymen is restrained by the Pluralities Act, 1838, under which it is not lawful for any spiritual person, holding any cathedral preferment or benefice, or any curacy or lectureship, or licensed or otherwise allowed to perform the duties of any ecclesiastical office whatever, to take to farm for occupation by himself, by lease or otherwise, for term of life, or years, or at will, any lands exceeding eighty acres in the whole, for the purpose of occupying, or using, or cultivating the same, without the permission in writing of the bishop of the diocese specially given for that purpose under his hand; and every such permission must specify the number of years, not exceeding seven, for which such permission is given; under a penalty of 40s. per annum for every acre of land above eighty acres so taken to farm contrary to the provision aforesaid.

A lease granted to a corporation aggregate goes to their successors (x); but a lease for years to a corporation sole, as to a bishop, will on his death devolve upon his executors *en autre droit* (y).

A corporation aggregate may lease to one of their own members, provided his concurrence is not necessary for the granting of the lease (z).

(b) Universities and Colleges.

Leases of the lands of the Universities of Oxford, Cambridge, and Durham, and of the colleges in those universities, and of the Colleges of Winchester and Eton, may be granted under the Universities and Colleges Estates Acts, 1858 to 1898 (a).

- (x) Bac. Abr. Corporations (E.) 4.
- (y) Co. Litt. 46 b; 1 Platt on Leases, 542.
- (z) 1 Platt on Leases, 542; Salter v. Grosvenor (1724), 8 Mod. 303.
 - (a) 21 & 22 Vict. c. 44; 23 & 24

Vict. c. 59; 43 & 44 Vict. c. 46; 61 & 62 Vict. c. 55. See also, as to Eton and Winchester Colleges, the Public Schools Act, 1868 (31 & 32 Vict. c. 118), s. 24.

(c) The Crown.

By 1 Anne, c. 1, s. 5 (b), a restriction was placed upon leases Crown leases. of Crown hereditaments (except advowsons) for terms exceeding thirty-one years or three lives, or, in the case of building or repairing leases, fifty years or three lives. By the Crown Lands Act, 1829 (c), the Crown lands were placed under the management of the Commissioners of Woods and Forests, who were empowered to lease for any term not exceeding thirty-one years, or, in the case of building leases, ninety-nine years, subject to the conditions mentioned in the Act. As to enrolment of such leases by a deposit of a duplicate thereof in the Office of Land Revenue, Records, and Enrolments (d), see the Crown Lands Act, 1829 (c), s. 63; the Crown Lands Act, 1852 (e), s. 7; and the Crown Lands Act, 1853(f), s. 6. See also, as to mining leases, the Crown Lands Act, 1873 (g), s. 4; as to surrenders, the Crown Lands Act, 1845 (h), s. 6, and the Crown Lands Act, 1894 (i); as to release from covenants, the Crown Lands Act, 1852 (e), s. 2.

As to leases taken on behalf of the Crown, see the Crown Lands Act, 1829 (c), ss. 47, 49.

As to leases of the private estates of the Crown, see the Crown Private Estates Acts, 1862 and 1873 (k).

As to leases of foreshores, which, where Crown property, are Foreshore. now in general placed under the management of the Board of Trade, see the Crown Lands Act, 1845 (l), s. 1; the Crown Lands Act, 1866 (m), ss. 7, 8; and, where the shore is used for oyster and mussel fisheries, the Crown Lands Act, 1885 (n), s. 3. It may here be mentioned that, in a recent case (o), it was held that an ancient municipal corporation might lawfully take, from a private lessor, a lease of the foreshore of an oyster fishery, with a view to the better regulation of the fishery.

As to leases by the Commissioners of Works, see the Commissioners of Works Act, 1852 (p).

```
(b) 1 Anne, stat. 1, c. 7, in Ruff-
head. See 1 & 2 Vict. c. 95, s. 4.
```

⁽c) 10 Geo. 4, c. 50; see ss. 22—31.

⁽d) See Crown Lands Act, 1832 (2 & 3 Will. 4, c. 1), s. 21; Crown lands Act, 1851 (14 & 15 Vict. c. 42), r. 6.

⁽e) 15 & 16 Vict. c. 62.

⁽f) 16 & 17 Vict. c. 56.

⁽g) 36 & 37 Vict. c. 36.

⁽h) 8 & 9 Vict. c. 99.

⁽i) 57 & 58 Vict. c. 43.

⁽k) 25 & 26 Vict. c. 37; 36 & 37 Vict. c. 61.

⁽l) 8 & 9 Vict. c. 99.

⁽m) 29 & 30 Vict. c. 62.

⁽n) 48 & 49 Vict. c. 79.

⁽o) Truro Corporation v. Rowe, [1901] 2 K. B. 870; [1902] 2 K. B. 709.

⁽p) 15 & 16 Vict. c. 28.

As to leases of land in the Forest of Dean, see 1 & 2 Vict. c. 43, c. 25; 24 & 25 Vict. c. 40, s. 6.

As to leases of lands belonging to the Duchy of Lancaster, see 48 Geo. 3, c. 78; 52 Geo. 3, c. 161; 1 & 2 Geo. 4, c. 52, ss. 12, 13; and as to leases of lands belonging to the Duchy of Cornwall, see Duchy of Cornwall Management Acts, 1863 and 1868 (q).

(d) Municipal Corporations and other Local Authorities.

Municipal corporations. 45 & 46 Vict. c. 50.

May grant building leases for seventy-five years, and other leases for thirty-one years. Sect. 108. Under the Municipal Corporations Act, 1882 (r), the council of a municipal corporation may make a lease or agreement for a lease of corporate property for a term not exceeding thirty-one years from the date of the lease or agreement, reserving during the whole of the term such yearly rent as to the council seems reasonable, without any fine; and they may make a lease or agreement for a lease for a term not exceeding seventy-five years, either at a reserved rent or on a fine, or both, as the council think fit:—

- (i) Of tenements or hereditaments, the greater part of the yearly value of which, at the date of the lease or agreement, consists of any building or buildings; or
- (ii) Of land proper for the erection of any houses or other buildings thereon, with or without gardens, yards, curtilages, or other appurtenances to be used therewith; or
- (iii) Where the lessee or intended lessee agrees to erect a building or buildings thereon of greater yearly value than the land,—of land proper for gardens, yards, curtilages, or other appurtenances to be used with any other house or other building erected or to be erected on any [such (s)] land, belonging either to the corporation or to any other proprietor, or proper for any other purpose calculated to afford convenience or accommodation to the occupiers of any such house or building (t).

(q) 26 & 27 Vict. c. 49; see sects. 21—28; 31 & 32 Vict. c. 35.

(r) The Act applies only to boroughs to which at the time of its passing the Municipal Corporations Act, 1835, applied, and to towns the inhabitants whereof are incorporated after the commencement of the Act, and whereto the provisions of the Municipal Corporations Acts are, under the Act, extended by charter: sect. 6. It does not apply, as regards the leasing

powers stated in the text, to metropolitan boroughs. (London Government Act, 1899 (62 & 63 Vict. c. 14), s. 31 (1).) For the former powers, see 5 & 6 Will. 4, c. 76, ss. 94, 96; 6 & 7 Will. 4, c. 104, s. 2.

(s) The word "such" seems to have been inserted by mistake. Cf. Crown Lands Act, 1829, s. 23.

(t) As to leases for working men's dwellings, see sect. 111.

But otherwise the council cannot grant a lease without the Sect. 109. approval of the Treasury (u). With such approval they may grant a lease of corporate lands on such terms and conditions as the Treasury approve.

These corporations, however, may renew leases in cases in Sect. 110. which, on the 5th June, 1835, they were bound by covenant or agreement, or enjoined by any deed, will, or other document, or sanctioned or warranted by ancient usage to make renewal; and also in all cases in which they had theretofore ordinarily made renewal of any lease, they may renew such lease as they might have done in case the Act had not been passed; a provision, it has been held, which ought to receive a liberal interpretation (x).

As to leases by and to District Councils (y), see the Public District Health Act, 1875 (z), ss. 27, 29, 51, 175, 177.

councils, &c.

As to leases for artizans' dwellings, where an improvement scheme is being adopted, see the Housing of the Working Classes Act, 1890 (a), s. 12; and as to leases for lodging-houses, see sect. 57, sub-sect. 2, of the same Act.

As to leases to local educational authorities, see the Elemen- Educational tary Education Act, 1870 (b), ss. 19 and 23, the Board of Education Act, 1899 (c), s. 2 (1), the Education Act, 1902 (d), s. 25 (2), and the Education (London) Act, 1903 (e), s. 1; and, as to leases by a local educational authority being subject to the control of the Board of Education, see the Elementary Education Act, 1870, s. 22, as modified by the above-mentioned Acts of 1899, 1902, and 1903.

As to the power of a library authority to hire land, see the Public Libraries Act, 1892 (f), s. 11.

Prior to the year 1819, parish officers had no estate in parish Parish lands. lands so as to be able to make a lease (q), but by the Poor Relief

(u) As to the effect of such approval, Davis v. Corp. of Leicester, [1894] ² Ch. 208.

(z) Att.-Gen. v. Great Yurmouth (1855), 21 Beav. 625.

(y) Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 21.

(z) 38 & 39 Viet. c. 55.

(a) 53 & 54 Vict. c. 70.

(b) 33 & 34 Vict. c. 75, which was extended by 35 & 36 Vict. c. 27, s. 1, to any offices required by the then School Board for London. And, as to taking leases for public purposes. see also the Baths and Wash-houses Acts, 1846, s. 24, and 1862, s. 3; the Parochial Offices Act, 1861, s. 1; and the Poor Law Amendment Act, 1867, s. 13.

(c) 62 & 63 Vict. c. 33. See, too, the Board's Memorandum (Form E. A. 1) issued on December 20th, 1902, and the Board's Form 96 T.

(d) 2 Edw. 7, c. 42.

(e) 3 Edw. 7, c. 24.

(f) 55 & 56 Vict. c. 53.

(y) Doe v. Terry (1835), 4 A. & E. 274; see Phillips v. Pearce (1826), 5 B. & C. 433; Doe v. Cockell (1836), 4 A. & E. 478.

Act, 1819 (h), s. 17, the churchwardens and overseers were constituted a body corporate for the purpose of holding buildings, lands, and hereditaments belonging to the parish (i); and, by sect. 13, were enabled, with the consent of the inhabitants in vestry assembled, to let any part of the parish lands to any poor and industrious inhabitant to be by him cultivated on his own account at such reasonable rent, and on such terms as the vestry should fix. To grant a valid lease of lands vested in the parish officers by the Act, the churchwardens and overseers must concur (k), but where land was vested in trustees for the parish, the Act did not necessarily divest their estate (l).

Parish councils.

In rural parishes which have a parish council the interests and powers of the parish officers in respect of parish lands, and the powers of the vestry, have been transferred to the parish council (m). The parish council may let any lands or buildings vested in the council, but the power of letting for more than a year is not, in the case of certain property specified in the Act, to be exercised without the consent mentioned in the Act(n). Where there is a parish meeting, the powers of the vestry are transferred to the meeting, and the legal interest in parish property vests in the chairman of the meeting and the overseers as a body corporate (o).

Letting by public authorities in allotments. 50 & 51 Vict. c. 48, s. 2.

Under the Allotments Act, 1887 (p), the sanitary authority of any urban or rural district—that is, as to urban districts which are boroughs the borough council, and as to other districts the urban or rural district council (q)—may acquire by purchase or hire land, whether within or without their district, suitable for allotments, and may let such land in allotments to persons Sect. 7(3), (4). belonging to the labouring population in the district. No allotment is to exceed one acre, save in the case of a temporary

(h) 59 Geo. 3, c. 12.

Sketchley (1847), 8 Q. B. 394.

⁽i) The statute does not apply to copyhold lands: Re Paddington Charities (1837), 8 Sim. 629. As to churchwardens, &c., taking land on lease for the purpose of the Act, see sects. 12, 17; and as to inclosure of waste or common land and letting to the industrious poor, see the Poor Relief Act, 1831 (1 & 2 Will. 4, c. 42), s. 2.

⁽k) Woodcock v. Gibson (1825), 4 B. & C. 462.

⁽l) Churchwardens of Deptford v.

⁽m) Local Government Act, 1894 (56 & 57 Vict. c. 73), ss. 5 (2), 6 (1), **52** (4, 5), 67.

⁽n) Sect. 8 (2). (o) Sect. 19.

⁽p) See Allotments Act, 1882 (45 & 46 Vict. c. 80), and the earlier provisions of the Allotments Act, 1832 (2 Will. 4, c. 42).

⁽q) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 6; Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 21.

letting of land which cannot be let in accordance with the Act and the regulations under it, and allotments may not be sub-let. A tenant of an allotment may, before the expiration of his Sect. 7 (6). tenancy, remove any fruit and other trees and bushes planted or acquired by him, for which he has no claim to compensation. Persons or corporations who are authorized to sell land to the Sect. 3 (7). sanitary authority for the purposes of the Act, may, without prejudice to any other power of leasing, lease land to the sanitary authority, without any fine or premium, for a term not exceeding thirty-five years.

Where a sanitary authority (other than a borough council) fails in its duties as to the acquisition of land for allotments, its powers may be transferred to the county council under the Allotments Act, 1890 (r).

Under the Local Government Act, 1894 (s), parish councils may hire land and may let it in allotments under sects. 5—8 of the Allotments Act, 1887 (t). If the parish council cannot obtain land by agreement, the county council may make an order authorizing compulsory hiring for not less than fourteen years nor more than thirty-five years. The parish council may let to one person an allotment exceeding one acre, but, if the land is hired compulsorily, not exceeding in the whole four acres. of pasture, or one acre of arable and three of pasture (u). The county council may confer the like powers on the parish meeting (x). Where land vested in a parish council is let by the council for allotments, no consent or approval required under the Charitable Trusts Acts, 1853 to 1891, need be obtained (y).

for small

A county council may, under the circumstances specified in Letting the Small Holdings Act, 1892 (z), hire land on lease or otherwise holdings. for the purpose of letting it in small holdings in accordance with the provisions of the Act, and they may also let land purchased by them to small holders who are not able to buy. Special provision is made for leases to a county council under the Act by tenants for life (a). The county council may delegate its powers in this behalf to a committee (b).

⁽r) 53 & 54 Vict. c. 65.

⁽s) 56 & 57 Vict. c. 73, s. 10.

⁽t) Supra, p. 34.

⁽u) Sect. 10 (6).

⁽x) Local Government Act, 1894, & 19 (10).

⁽y) Sect. 8 (2).

⁽z) 55 & 56 Viet. c. 31, ss. 2, 4.

⁽a) Sect. 12; infra, p. 43.

⁽b) Sect. 16. Cf. Local Government Act, 1894, s. $6 \cdot (4)$.

Exemptions from Mortmain Acts.

Leases by deed to local authorities are subject to sect. 6 of the Mortmain and Charitable Uses Act, 1888 (c), except so much of sub-sect. 2 as requires an assurance by deed, made otherwise than in good faith and for valuable consideration, to be executed not less than twelve months before the death of the assuror (d).

(e) Building Societies, &c.

As to leases by and to building societies, see the Building Societies Act, 1874 (e), s. 37; friendly societies, the Friendly Societies Act, 1896(f), s. 47 (1); industrial and provident societies, the Industrial and Provident Societies Act, 1893 (g), s. 36; and trade unions, the Trade Unions Act, 1871 (h), s. 7.

(f) Companies.

Companies. 25 & 26 Vict. c. 89, s. 18. Sect. 21.

A company incorporated under the Companies Act, 1862, has power to hold lands, but no company formed for the purpose of promoting art, science, religion, charity, or any other like object, not involving the acquisition of gain by the company or by the individual members thereof, can, without the sanction of the Board of Trade, hold more than two acres of land. section the company can take a lease of lands (i). Power to take on lease, and to lease, real property is usually expressly conferred on the company by its memorandum of association.

A lease of the undertaking of a company may be sanctioned as an arrangement under the Joint Stock Companies Arrangement Act, 1870, s. 2(k).

(c) 51 & 52 Vict. c. 42. See infra, p. 39.

- (d) Mortmain and Charitable Uses (Amendment) Act, 1892 (55 Vict. c. 11), s. 1. As to "assurance" in this Act, including leases, see sect. 2, and Act of 1888, s. 10. As to meaning of "local authority," see sect. 2. And, as to any assurance of land for the purpose of a school-house for an elementary school, see s. 23 (5) of the Education Act, 1902 (2 Edw. 7, c. 42).
 - (e) 37 & 38 Vict. c. 42. (f) 59 & 60 Vict. c. 25.
 - (g) 56 & 57 Vict. c. 39. (h) 34 & 35 Vict. c. 31.
- (i) As to taking on lease and subletting more land than the company requires, see Re London and Colonial 'Co., Horsey's Claim (1868), L. R.

5 Eq. 561, 562, note (1). As to the right of trustees in whose names the lease is taken to be reimbursed by the company any expenses they incur, see Re Buckley (1866), 35 Beav. 449; Re Pooley Hall Colliery Co. (1870), 18 W. R. 201; Southampton Imperial Hotel Co., Hunt's Claim (1872), 20 W. R. 435 (claim in winding-up). The company in such a case is not liable directly to the lessor: Walters v. Northern Coal Mining Co. (1855), 5 D. M. & G. 629, 640; Cox v. Bishop (1857), 8 D. M. & G. 815; though it will be restrained from using the property in violation of the provisions of the lease: Wright v. Pitt (1870), L. R. 12 Eq. 408.

(k) 33 & 34 Vict. c. 104; In re Dynevor, &c., Collieries Co. (1879), 11

Ch. D. 605.

VII. TRUSTEES FOR CHARITABLE USES.

(a) Leases by Trustees.

By the Charitable Trusts Act, 1855, the trustees or persons Restriction acting in the administration of any charity which is within the trustees. Charitable Trusts Act (1) are prohibited from granting, otherwise 18 & 19 Vict. than under the express authority of Parliament, under some statute, or of a Court or Judge of competent jurisdiction, or according to a scheme legally established (m), or with the approval of the Charity Commissioners (n), any lease of the charity estate in reversion after more than three years of any existing term or for any term of life, or in consideration wholly or in part of any fine, or for any term of years exceeding twentyone years. A lease granted by the trustees of a charity for more than twenty-one years, without the approval of the Charity Commissioners, in contravention of the provisions of sect. 29 of the Act of 1855, is not valid for a term of twenty-one years, but is absolutely void (o).

on leasing by c. 124, s. 29.

As to the mode of obtaining the consent of the Charity 16 & 17 Vict. Commissioners to building, repairing, and mining leases, see Charitable Trusts Act, 1853, s. 21; and as to such leases being valid although not authorized by the terms of the trust, see The vesting of the charity lands in the "Official sect. 26. Trustee of Charity Lands" (p), under sect. 48 of the same Act, does not prevent the acting trustees (or a majority consisting of not less than three persons) from granting leases and enforcing or being liable under covenants: Act of 1855, s. 16.

Subject to the above restrictions, the trustees of a charity may Leases by grant leases of the charity estate in pursuance of the directions trustees. in that behalf given by the founder or contained in the instrument creating the charity; or, if there are no such directions, they may lease the charity estate at a rent representing the full

- (1) For the excepted charities, see 16 & 17 Vict. c. 137, s. 62; 18 & 19 Vict. c. 124, ss. 47, 49. As to leases of portions of closed cemeteries, see 20 & 21 Vict. c. 81, s. 24.
- (m) As to inserting leasing powers in a scheme, see Re Smith's Charity (1882), 26 Sol. Journ. 298. The deed of foundation does not constitute a scheme "legally established," so as to enable the trustees by themselves to exercise a power of leasing contained in it: Re Mason's Orphanage,

[1896] 1 Ch. 596.

(n) Note that under the provisions of sect. 2 (2) of the Board of Education Act, 1899 (62 & 63 Vict. c. 33), and certain Orders in Council, the Board of Education has taken over all the powers of the Charity Commissioners over all endowments held for purely educational purposes.

(o) B. of Bangor v. Parry, [1891]

2 Q. B. 277.

(p) Sect. 15 of the Act of 1855.

annual value of the demised property (q), and for a term and upon conditions consistent with its provident management (r). In order to induce the Court to set aside a charity lease already existing it is not enough to say that the mode of letting is not the best that might be prescribed; it must be shown that the mode is so positively bad that no persons meaning fairly to discharge their trust would have resorted to it (s). A charity lease may be set aside on the mere ground of undervalue, but such undervalue must be satisfactorily proved, and must be considerable in amount (t). And since the case of a charity estate is one in which, of all others, the security of the rent is the first point to be regarded, in such a case "the inadequacy of the rent reserved is less a badge of fraud than it would be in almost any other instance" (u). Farming leases for terms not exceeding twenty-one years have been considered proper (x). lease for a longer term than ninety-nine years cannot stand unless there be some special ground on which it can be supported (y).

Where the charity is in the hands of a corporation, leases of the charity lands may be subject also to the disabling statutes of Elizabeth (z). Accordingly, s. 38 of the Charitable Trusts Act, 1855, provides that leases authorized by the Charity Commissioners shall be valid notwithstanding such disabling statutes, and under sect. 39 the Commissioners may prepare and approve of any scheme for the letting of the charity property, and all leases granted by the trustees or persons acting in the management of the charity, pursuant to such scheme, are valid. Words in the Acts applying to any person or individual apply also to a corporation, whether sole or aggregate (a), and a majority of the trustees or persons acting in the administration of a charity

(q) East v. Ryal (1725), 2 P. W. 284. See Att.-Gen. v. Morgan (1826), 2 Russ. 306; Att.-Gen. v. Brooke (1811), 18 Ves. p. 326.

⁽r) Att.-Gen. v. Owen (1805), 10 Ves. p. 560; Att.-Gen. v. (triffith (1807), 13 Ves. p. 575; Att.-Gen. v. Pargeter (1843), 6 Beav. 150. The trustees must not lease to one of themselves: Att.-Gen. v. Dixie (1807), 13 Ves. p. 534; and a lease to a relative of a trustee is viewed with suspicion: Ex parte Skinner (1817), 2 Mer. 457; Ferraby v. Hobson (1847), 2 Phil. 261.

⁽s) Att.-Gen. v. Cross (1817), 3 Mer. p. 540.

⁽t) Att.-Gen. v. Cross (1817), 3 Mer. pp. 540, 541.

⁽u) Exparte Skinner (1817), 2 Mer., at p. 457.

⁽x) Att.-Gen. v. Owen (1805), 10 Ves. p. 560.

⁽y) Att.-Gen. v. Foord (1843), 6 Beav. p. 290.

⁽z) Ŝupra, p. 25. See Magdalen Hospital v. Knotts (1879), 4 App. Cas. 324.

⁽a) Act of 1855, s. 48.

present at a duly constituted meeting of their body are empowered to act (b).

See the Allotments Extension Act, 1882 (c), as to the letting of lands vested in trustees for the benefit of the poor of any parish; and the Municipal Corporations Act, 1883 (d), s. 8, as to setting aside leases of charity lands in certain cases.

(b) Leases to Trustees for Charitable Uses.

Subject to the exemptions noticed below, a lease for the Leases to benefit of any charitable uses is void (e) unless it complies with trustees for charitable the requirements of the Mortmain and Charitable Uses Act, uses. 1888 (f); that is, it must be made to take effect immediately in possession (g); it must contain no reservation or condition for the benefit of the lessor, save only as mentioned in the Act; it must be by deed executed in the presence of at least two witnesses (h); unless made in good faith for full and valuable consideration, it must be made at least twelve months before the death of the lessor; and it must within six months after execution be enrolled in the Central Office of the Supreme Court (i), though in certain cases the omission to enrol within the time limited may be cured (k). The reservations and conditions which may be made in favour of the lessor (provided the same benefits are reserved to persons claiming under the lessor as to the lessor himself) are as follows: the reservation of a peppercorn or other nominal rent; of mines and minerals; or of any easement; covenants or provisions as to the erection, repair, position, or

51 & 52 Vict. c. 42, s. 4.

Beav. 460 (on 9 Geo. 2, c. 36).

(g) See 26 & 27 Vict. c. 106; infra, p. 40.

(h) See Wickham v. Marquis of Bath (1865), L. R. 1 Eq. 17.

(k) Sect. 5.

⁽b) Charitable Trusts Act, 1869 (32 & 33 Vict. c. 110), s. 12.

⁽c) 45 & 46 Vict. c. 80. (d) 46 & 47 Vict. c. 18.

^(*) Apparently this does not apply to lands already in mortmain. See Walker v. Richardson (1837), 2 M. & W. 882; Att.-Gen. v. Glyn (1841), 12 Sm. 84; Ashton v. Jones (1860), 28

⁽f) See Bunting v. Surgent (1879), 13 Ch. D. 330; Churcher v. Martin (1889), 42 Ch. D. 312. For exempnons in the case of leases for religious purposes, or for the promotion of education, &c., see sect. 7; as to universities and colleges, and land assured for a public park, elementary school-house, or public museum, sect. 6, and also, as to land for

school-house, sect. 23 (5) of the Education Act, 1902 (2 Edw. 7, c. 42); as to workmen's dwellings, the Working Classes Dwellings Act, 1890 (53 & 54 Vict. c. 16); as to assurances to local authorities, supra, p. 36; and as to exemptions under special Acts, see Tudor's Charitable Trusts, ed. 1889, p. 432.

⁽i) If the charitable uses of the lease are declared by a separate instrument duly enrolled, it is not necessary to enrol the lease: sect. 4 (9).

description of buildings, the formation or repair of streets or roads, drainage or nuisances, and covenants or provisions of the like nature for the use and enjoyment as well of the demised land as of any adjacent land; a right of re-entry on non-payment of any such rent or on breach of any such covenant or provision; and other stipulations of a like nature for the benefit of the lessor or of any person claiming under him.

The foregoing provisions primâ facie make it impossible to grant a lease for charitable uses (1) at a rent other than nominal, but a lease at a substantial rent is authorized under the provision that if the assurance is made in good faith on a sale for full and valuable consideration (m), that consideration may consist wholly or partly of a rent reserved to the vendor with or without a right of re-entry for non-payment. The expression "on a sale" includes the granting of a lease, the lessee being a purchaser pro tanto(n). Moreover, the practice of granting leases to charities is expressly recognized by the enactment that every deed or assurance by which any land shall have been demised for any term of years for any charitable use shall be deemed to have been made to take effect for the charitable use thereby intended immediately from the making thereof, if the term for which such land shall have been thereby demised was thereby made to commence and take effect in possession at any time within one year from the date of such deed or assurance (o).

(2) RESTRICTIONS ARISING FROM LIMITED INTEREST.

I. TENANTS IN TAIL.

Leases by tenants in tail.

3 & 4 Will. 4, c. 74, ss. 15, 34.
Sects. 40, 41.

Tenants in tail can grant leases under the Fines and Recoveries Act, 1833, but where there is a protector of the settlement (p), his consent is necessary to make the lease effectual against remaindermen and reversioners subsequent to the estate tail. Leases under the Act must be by deed, and must be enrolled in the Enrolment Department of the Central Office (q) within six months after execution, except leases for a term not exceeding twenty-one years at a rack-rent, or not less than five-sixths of a rack-rent, where the term

⁽l) Cf. Doe v. Hawthorne (1818), 2 B. & A. 96; Webster v. Southey (1887), 36 Ch. D. 9.

⁽m) See sect. 10.

⁽n) Infra, p. 55.

⁽o) 26 & 27 Vict. c. 106.

⁽p) See sect. 22 for definition of this phrase.

⁽q) R. S. C. Ord. 61, r. 9.

is to commence from the date of the lease or from any time not exceeding twelve months from such date. Tenants in tail also have the powers of leasing conferred upon a tenant for life by the Settled Estates Act, 1877 (r), and the Settled Land Act, 1882 (s).

A lease for years by a tenant in tail, not authorized by any Leases by statutory power or by a power to lease contained in the settlement, is not absolutely determined by his death, but the issue pursuance of in tail is at liberty either to affirm or avoid it as he may think fit (u). His affirmance may be either expressed, or implied from acceptance of rent (x), or from bringing an action for recovery thereof, or an action of waste (y). As against remaindermen after the estate tail, the lease is void (z).

tenants in tail not in statutes (t).

II. TENANTS FOR LIFE.

Under the Settled Land Act, 1882 (a), s. 6, a tenant for Tenants for life (b) under any settlement, whether executed before or after life. the commencement of the Act(c), may lease (d) the settled Land Act, land (e), or any part thereof, or any easement, right, or privilege of any kind over or in relation to the same, for any purpose whatever, whether involving waste or not, for any term not exceeding, (i) in the case of a building lease, ninety-nine years, (ii) in the case of a mining lease (f), sixty years, and (iii) in the case of any other lease, twenty-one years. And it may here be mentioned parenthetically that, in proper cases, capital moneys

Settled 1882, s. 6.

(r) Sect. 46. See infra, p. 48.

(s) Sect. 58 (1) (i).

(t) For former statutory power of leasing, see 32 Hen. 8, c. 28, repealed as to leases by tenants in tail by 19 & 20 Vict. c. 120, s. 35.

(u) Co. Litt. 45 b; Bac. Abr. (D.) 651; E. of Bedford's Case (1586), 7

(x) Doe v. Jenkins (1829), 5 Bing. 469, 476; Doe v. Rollings (1847), 4 C. B. 188; Stiles v. Cowper (1748), 3 Atk. p. 693. See Osborn v. D. of Marlborough (1866), 14 L. T. 789.

(y) Bac. Abr. (D.) 652.

(z) Co. Litt. 45 b; Andrew v. Pearce

(c) See sect. 2 (1). (d) As to the operation of the lease, see sect. 20 (1), (2).

(c) As to "land," see note (c),

(1805), 1 B. & P. N. R. 158. (a) 45 & 46 Vict. c. 38. (b) See sect. 2 (5)—(7).

supra, p. 4; as to "settled land," see sect. 2 (3). The principal mansionhouse and the park and lands usually occupied therewith cannot be leased without the consent of the trustees of the settlement or an order of the Court: S. L. Act, 1890, s. 10; Marquess of Ailesbury's S. E., [1892] 1 Ch. 506; [1892] A. C. 356. And so as to a lease of easements over the park: Sutherland v. Sutherland, [1893] 3 Ch. 169; Pease v. Courtney, [1904] W. N. 148. As to what is to be deemed a principal mansion-house, see S. L. Act, 1890, s. 10 (3). The order is made upon application by summons at Chambers: S. L. Act Rules, 1882, r. 2; Seton, 6th ed. pp. 1830, 1838.

(f) Mining leases under the Act of 1882 and generally are treated of

infra, pp. 192 et seq.

arising under the Act may be applied in paying the expenses of making any additions to or alterations in buildings, reasonably necessary or proper to enable the same to be let (g).

A lease, to be valid under the Act, need not expressly refer to the Act (h); and there may be circumstances under which, and terms on which, a tenant for life could make a valid lease in favour of his wife (i). But a lease granted by a tenant for life must, in order to be valid, be granted in the bonâ fide exercise of his power, having regard to the interests of all parties entitled under the settlement (k). Accordingly, where a lady, who was tenant for life of a house during her widowhood, proposed to grant a lease of it to a gentleman with whom she was about to re-marry, her real object being that she might herself continue in occupation of the premises, the Court held that the proposed grant would not be a bonâ fide exercise of her statutory leasing power, and, at the instance of the remaindermen, restrained her by injunction from granting the lease (l).

Surface and minerals.

The statutory leasing powers of a tenant for life enable him to grant either a lease of the surface of settled land reserving the mines and minerals under it, or a lease of the mines and minerals without the surface (m).

Requisites. Sect. 7.

A lease under the Act of 1882 must comply with the following conditions (n):—

- (1) It must be by deed (o), and must be made to take effect in possession (p) not later than twelve months (q) after its date. Consequently, a sub-lease for the residue of the term created by the head lease should not contain a covenant for the extension of the sub-term upon the renewal of the head lease (r); but
- (g) See S. L. Act, 1882, s. 21 (iii), and s. 25; S. L. Act, 1890, s. 13 (ii); Re Blagrave's S. E., [1903] 1 Ch. 560; Re Calverley's S. E., [1903] 73 L. J. Ch. 25; 89 L. T. 500.

(h) Mogridge v. Clapp, [1892] 3 Ch. 382.

(i) See Sutherland v. Sutherland, [1893] 3 Ch. 169, at p. 196.

(k) Sect. 53. See Sutherland v. Sutherland, supra. And, as to the tenant for life being a trustee of damages recovered for breach of covenant in a lease granted by him, see Mitchell v. Armstrong (1901), 17 T. L. R. 495.

(1) Middlemus v. Stevens, [1901] 1 Ch. 574, 577; and see the cases cited in argument, p. 576.

(m) Re Gladstone, Gladstone v. Gladstone, [1900] 2 Ch. 101, 104 (C. A.). See further, on this point, infra, p. 197.

(n) As to evidence of facts or calculations affecting the lease, see sect. 7(5). As to protection of lessees dealing in good faith with the tenant for life, see sect. 54.

(o) As to the effect of the conveyance, see sect. 20.

(p) See Sutherland v. Sutherland, [1893] 3 Ch. p. 192.

(q) I.e., calendar months: Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 3.

(r) Re Farnell's S. E. (1886), 33 Ch. D. 599. upon a surrender and new grant of a head lease, the existence of an unexpired sub-lease does not prevent the new lease from taking effect in possession (s).

- (2) The lease must reserve the best rent (t) that can reasonably be obtained (u), regard being had to any fine (x) taken, and to any money laid out or to be laid out for the benefit of the settled land, and generally to the circumstances of the case. In estimating the best rent in the case of an agricultural holding it is not necessary to take into account against the tenant the increase in the value of the holding arising from improvements made or paid for by him (y). Under the item "money laid out," past voluntary expenditure cannot be taken into account; the expenditure must have direct reference to the granting of the lease (z). If the lease does not reserve the best rent that could be obtained, and particularly if, in the matter of the grant, the lessee was not "dealing in good faith" within the meaning of sect. 54 of the Act of 1882, the lease is certainly voidable, and perhaps void (a).
- (3) The lease must contain a "covenant by the lessee" for payment of the rent, and a condition of re-entry on non-payment within a time therein specified not exceeding thirty days. If the time specified exceeds this limit the lease has no effect under the Act (b). Moreover, a "covenant by the lessee" means a legal covenant, which can be sued upon at law: from which it follows that a lease granted by a tenant for life, under the statutory power, to himself and others as lessees, and containing covenants by the lessees with the lessor, is bad, whether the covenants are joint or joint and several; for in either case there are not, from the commencement of the lease, legal covenants enforceable against every lessee (c).

(s) Re Ford's S. E. (1869), 8 Eq. 309.
(f) See sect. 2 (10) (ii). As to relaxation of this requirement in the case of working men's dwellings, see the Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70), s. 74, and S. L. Act, 1890, s. 18; and as to small holdings, the Small Holdings

Act, 1892 (55 & 56 Vict. c. 31), s. 12.
(u) See Sutherland v. Sutherland,

[1893] 3 Ch. p. 195.

(x) A fine or premium received on the grant of a lease under any power conferred by the Act of 1882 is to be deemed capital money arising under that Act: S. L. Act, 1884 (47 & 48 Vict. c. 18), s. 4.

(y) Agricultural Holdings (England) Act, 1883 (46 & 47 Vict. c. 61), s. 43.

(z) Re Chawner's S. E., [1892] 2

Ch. p. 196.

(a) Re Hardman and Wilcox's Contract, [1902] 1 Ch. 599, 602, 608. Cf. Boyce v. Edbrooke, infra, at p. 841.

(b) Cf. Doe v. Burrough (1844), 6

Q. B. 229.

(c) Boyce v. Edbrooke, [1903] 1 Ch. 836, 842.

(4) A counterpart is to be executed by the lessee and delivered to the tenant for life.

Notice to trustees. Sect. 45.

A tenant for life, when intending to make an agreement for a lease, or a lease, must give notice to each of the trustees of the settlement (d) by registered letter, and also to the solicitor for the trustees, if known to him, not less than one month before the making of the lease or a contract for the same (e). notice may be a notice of a general intention to lease (f). the date of the notice the number of trustees must be not less than two, unless a contrary intention is expressed in the settle-A person dealing in good faith with the tenant for life is not concerned to inquire respecting the giving of the notice (g); and, in the case of a lease where no fine is taken, it seems that the lessee need not inquire as to the existence of trustees (h), though in the case of a purchase or of a lease at a fine (which is capital money (i)) there must be trustees at the time of completion to receive the purchase-money or fine (k). But the Court will restrain the granting of the lease till trustees have been appointed and notice given (l); and it seems that the lease will be bad if the lessee actually knows that there are no trustees (m). The trustees to whom notice is given incur no liability by remaining passive (n). If a difference arises between them and the tenant for life respecting the exercise of the power of leasing or any matter relating thereto, either party is at liberty to apply (o) to the High Court for directions (p).

Leases not exceeding twenty-one years. Settled Land Act, 1890, s. 7.

In the case of leases not exceeding twenty-one years, provided the rent is the best that can be reasonably obtained without fine, and that the lessee is not exempted from punishment for waste (q),

(d) That is, trustees of the settlement for the purposes of the Acts. S. L. Act, 1882, s. 2 (8); S. L. Act, 1890, s. 16. As to appointment of trustees, see S. L. Act, 1882, s. 38; and of new trustees, Trustee Act, 1893, s. 47.

(e) Re Bentley, Wade v. Wilson (1885), 54 L. J. Ch. 782. Any trustee, by writing under his hand, may waive notice either in any particular case, or generally, and may accept less than one month's notice: S. L. Act, 1884, s. 5 (3).

(\$\ Q\ T\ A.4 1004 a. 5

(f) S. L. Act, 1884, s. 5 (1). (g) See Duke of Marlborough v. Sartoris (1886), 32 Ch. D. p. 623. (h) Mogridge v. Clapp, [1892] 3-Ch. 382.

(i) S. L. Act, 1884, s. 4.

- (k) Hatten v. Russell (1888), 38 Ch. D. 334.
- (l) Wheelwright v. Walker (1883), 23 Ch. D. 752; Mogridge v. Clapp, [1892] 3 Ch. p. 400.

(m) Hughes v. Fanagan (1891), 30 L. R. Ir. 111.

(n) Sect. 42.

- (o) By summons in Chambers: S. L. Act Rules, 1882, r. 2.
- (p) Sect. 44. There is no provision ensuring a trustee who applies his costs of the application.

(q) See infra, p. 49, note (d).

the following relaxation of the above provisions is allowed:— No notice need be given under sect. 45 of the Act of 1882; there need not be any trustees of the settlement for the purposes of the Settled Land Acts; and the lease may be by writing under hand, with an agreement in lieu of a covenant for payment of rent, provided the term does not extend beyond three years from the date of the writing.

A tenant for life may accept, with or without consideration (r), Surrenders a surrender of any lease of settled land, whether made under the Act of 1882 or not (s), and may grant new leases (s). On a Act, 1882, surrender of a lease in respect of a part only of the land or of the mines and minerals leased, the rent may be apportioned (t). He may also contract for leases and for surrenders of contracts for leases, and such contracts will bind his successors in title (u). Similarly a tenant for life can give effect to a contract for a lease made by his predecessor in title, or to a covenant for renewal, where such lease, if made by the predecessor, would be binding on the successor, or where such covenant could be enforced against the owner for the time being of the settled land (x); and can confirm a void or voidable lease provided the lease when confirmed is such as might at the date of the original lease have been lawfully granted under the Act or otherwise (x).

The provisions of the Act of 1882 do not abridge other powers Effect of for the time being subsisting under a settlement (y); but in case of conflict (sect. 56 (2)) between the provisions of a settlement and those of the Act relative to any matter in respect of which the tenant for life exercises or contracts or intends to exercise any power under the Act, the provisions of the Act are to prevail; and accordingly, save in the case of settlements within the mean ing of sect. 63 (z), the consent of the tenant for life (a) is necessary to the exercise by the trustees of the settlement, or other person, of any power conferred by the settlement exercisable for any purpose provided for in the Act(b). The conflict referred to in

and contracts. Settled Land s. 13.

Act of 1882 on powers.

⁽r) As to such consideration, see Re Hunloke's S. E., Fitzroy v. Hunloke, [1902] 1 Ch. 941, and Re Guthrie's S. E., ib. 942 note.

⁽s) S. L. Act, 1882, s. 13. Easton v. Penny (1892), 67 L. T. 290.

⁽t) Sect. 13 (2).

⁽u) Sect. 31. See Davis v. Harford (1882), 22 Ch. D. 128.

⁽x) Sect. 12. Re Kemeys-Tynte,

^{[1892] 2} Ch. 211.

⁽y) Sects. 56, 57.

⁽z) S. L. Act, 1884, s. 6 (1). See *infra*, p. 47.

⁽a) Or, where two or more persons constitute the tenant for life, the consent of any one of them: S. L. Act, 1884, s. 6 (2).

⁽b) Re Atherton, W. N. 1891, p. 85.

sect. 56 (2) means a conflict between provisions connected with the execution of the power, such as consent of a third person, and not with the results of such execution or the subject-matter of the power (c). Where there is an order granting a power of leasing under the Settled Estates Act, 1877, an order should be obtained staying such existing order before the powers of the Settled Land Acts are exercised (d).

Building leases.
Sect. 8.

Special provision is made by sect. 8 of the Act of 1882 as to the terms on which building, repairing (e), and improving (f) leases may be granted. A nominal rent may be reserved for the first five years, and, subject to certain restrictions, where the land is contracted to be leased in lots, the entire rent may be apportioned among the various lots (g). Under sect. 2 of the Settled Land Act, 1889, a building lease or agreement may be granted with an option of purchase, subject to the provisions of the section. On the grant of a building lease the tenant for life may cause parts of the settled land to be laid out for streets, squares, gardens, or other open spaces, with drains, &c. (h).

Sect. 10.

Under sect. 10 of the Act of 1882, the statutory term or conditions of building leases may, by order of the Court, be varied where such variation is required by local custom, or it would be difficult to let for or on the statutory term or conditions (i).

Power to grant to copyholders licences for leasing.
Sect. 14.

A tenant for life may grant to a tenant of copyhold or customary land, parcel of a manor comprised in the settlement, a licence to make any such lease of that land, or of a specified part thereof, as the tenant for life is empowered by the Act to make of freehold land. The licence may fix the annual value whereon fines, fees, or other customary payments are to be assessed, or the amount

(c) Earl of Lonsdale v. Lowther, [1900] 2 Ch. 687, 697.

(d) Re Poole's Settlement (1884), 50 L. T. 585.

(e) Truscott v. Diamond Rock Boring Co. (1882), 20 Ch. D. 251; Re Daniell's S. E., [1894] 3 Ch. 503.

(f) See sect. 2 (10) (iii).

(y) As to leases of lots after the agreed rent has been already secured by the earlier leases, see *Re Sabin*, W. N. 1885, p. 197.

(h) S. L. Act, 1882, s. 16.

(i) See S. L. Act Rules, 1882, r. 9: Seton, 6th ed., pp. 1828, 1832; Re O'Connell's Estate, [1903] 1 Ir. R. 154; also Cecil v. Langdon (1886), 54 L. T. 418, where, an infant tenant in tail in possession being eighteen years of age, and opposing an application by the trustees for general authority to grant building leases of lands in Sheffield for terms not exceeding 200 years, the Court declined to give them such an authority, and required them to seek the Court's approval, on notice to the infant, of each and every lease which they might propose to grant.

having the

Act of 1882,

powers

for life.

s. 58.

The licence must be entered of those fines, fees, or payments. on the court rolls of the manor.

Each of the following persons, when his estate or interest is in Persons possession (j), has the powers of leasing conferred on a tenant for life (k) by the Act of 1882:—(i) a tenant in tail (special of a tenant provision being made with respect to tenants in tail who are restrained by statute from barring the estate tail); (ii) a tenant in fee simple with an executory limitation over on failure of his issue or in any other event (l); (iii) a person entitled to a base fee: (iv) a tenant for years determinable on life, not holding merely under a lease at a rent (m); (v) a tenant for the life of another, not holding merely under a lease at a rent; (vi) a tenant for his own or any other life, or for years determinable on life, whose estate is liable to cease in any event during that life, whether by expiration of the estate, or by conditional limitation (n), or otherwise, or to be defeated by an executory limitation over, or is subject to a trust for accumulation of income for payment of debts or other purposes (o); (vii) a tenant in tail after possibility of issue extinct; (viii) a tenant by the curtesy (p); and (ix) a person entitled to the income of land under a trust or direction for payment thereof to himself during his own or any other life, whether subject to expenses of management or not (q), or until sale of the land, or until forfeiture of his interest on bankruptcy or other event.

Land which is subject to a trust or direction for sale and for Settlement the application of the income till sale for the benefit of any person for life, whether absolutely or subject to restriction, is deemed to be settled land; the instrument under which the trust arises is deemed to be a settlement (r); the person beneficially

by way of trust for sale.

Settled Land

Act, 1882,

s. 63.

⁽j) See Re Atkinson (1886), 31 Ch. D. p. 580; Re Morgan (1883), 24 Ch. D. p. 116; Re Jones (1884), 26 Ch. D. p. 744; Re Clitheroe Estate (1885), 31 Ch. D. 135; Re Strangways (1886), 34 Ch. D. 423.

⁽k) Where, in the events which happen, the estate devolves upon the heir-at-law of the settlor for his life, see Re Atherton, W. N. 1891, 85.

⁽¹⁾ See Conveyancing Act, 1882, **8.** 10.

⁽m) Re Hazle's S. E. (1885), 29 Ch. D. 78.

⁽n) Re Paget's S. E. (1885), 30 Ch. D. 161.

⁽v) Williams ∇ . Jenkins, [1893] 1 Cf. Re Strangways (1886), Ch. 700. 84 Ch. D. 423.

⁽p) Mogridge v. Clapp, [1892] 3 Ch. See S. L. Act, 1884, s. 8.

⁽q) Re Jones (1884), 26 Ch. D. 736; Re Clitheroe Estate (1885), 31 Ch. D. 135; Clarke v. Thornton (1887), 35 Ch. D. p. 311; but a discretionary trust for payment is not sufficient: Re Atkinson (1886), 31 Ch. D. 577. Cf. Re Horne's S. E. (1888), 39 Ch.

⁽r) See Re Earle and Webster's Contract (1883), 24 Ch. D. 144; Re Ridge (1885), 31 Ch. D. 504.

entitled to the income is deemed tenant for life; and the trustees for sale are for the purposes of the Act trustees of the settlement (s). Consequently the tenant for life, as thus defined, has the statutory power of leasing, and is, in general, entitled to be let into possession (t). But in order to avoid a conflict between the powers of the tenant for life and the trustees, the tenant for life cannot exercise his powers under sect. 63 without the leave of the Court, and while the order giving leave is in force any trust or power for the same purpose cannot be executed (u). But, before such order, the trustees can execute the trust without the consent of the tenant for life, notwithstanding sect. 56 of the Settled Land Act, 1882 (x). Thus a lease cannot be made by a tenant for life of proceeds of sale under a trust for sale except with the sanction of the Court (y).

Powers of tenant for life under Settled Estates Act, 1877, s. 46. Under the Settled Estates Act, 1877 (z), persons entitled to the possession (a) or to the receipt of the rents and profits of any settled estates for an estate for any life (b), or for a term of years determinable with any life or lives, or for any greater estate, under a settlement made since November 1st, 1856 (sect. 57), unless the settlement contains an express declaration to the contrary, and also any person entitled to the possession or to the receipt of the rents and profits of any unsettled estate as tenant by the curtesy or in dower, may, without any application to the Court, demise the same or any part thereof, except the principal mansion-house and demesnes and other lands usually occupied therewith.

Requisites for leases.

The term must not exceed twenty-one years for estates in England, and thirty-five years in Ireland, and the lease must take effect in possession at or within one year next after the making thereof. Every such demise must be made by deed at the best rent that can reasonably be obtained (c), without any fine or other benefit in the nature of a fine, and the rent must be incident to the immediate reversion. The demise must not be

(t) Re Bayot's Settlement, [1894] 1 Ch. 177.

(u) S. L. Act. 1884, s. 7.

(z) 40 & 41 Vict. c. 18.

(a) See Taylor v. Taylor (1875), 20 Eq. 297.

(c) Re Rawlins' Estate (1865), L. R. 1 Eq. 286.

⁽s) For a case where the section was held not to apply, the trust for sale being postponed, see Re Horne's S. E. (1888), 39 Ch. D. 84.

⁽x) Sect. 6 (1). (y) Re Daniell's S. E., [1894] 3 Ch. 503.

⁽b) A tenant in tail after possibility of issue extinct is to be deemed to be a tenant for life. See sect. 2.

made without impeachment of waste (d); it must contain a covenant for payment of the rent, and such other usual and proper covenants (e) as the lessor shall think fit, and also a condition of re-entry on non-payment of the rent for a period of not less than twenty-eight days; and a counterpart must be executed by the lessee (f).

Leases by a tenant for life, not authorized by any statutory Leases by power or by a power contained in the settlement, are valid during life not in the life of the lessor (g), even though his estate comes to an end pursuance of by forfeiture or surrender (h), but on his decease become absolutely void (i), and incapable of confirmation by the succeeding owner (k). But a new tenancy from year to year may be created by his acceptance of rent from the tenant (l), and where the succeeding owner has knowingly permitted or encouraged the lessee to expend money in improvements on the premises, he will not be allowed to eject the lessee (m).

tenants for

As to leases by tenants for terms of years, see Underleases, infra, Chap. IV., sect. 13.

As to the payment out of capital moneys arising under the Settled Land Act, 1882, of costs, charges, and expenses incidental to the exercise of a tenant for life's statutory leasing powers, see infra, p. 190.

III. LEASES BY THE COURT.

The Settled Estates Act, 1877 (n), empowers the Court (o), if Leases by the it shall deem it proper and consistent with a due regard to the

Court. Settled Estates Act, 1877.

(d) Hence it must not exempt the lessee from liability for "fair wear and tear and damage by tempest": Davies v. Davies (1888), 38 Ch. D. 499. See article in 37 Sol. Journ. p. 76.

(e) I.e., legal covenants. Bayce v. Edbrooke, [1903] 1 Ch. 836;

зирта, р. 43.

- (f) See also sects. 47, 48. As to licences to copyhold tenants to grant leases, see sect. 9. This Act is still occasionally useful, as where there are no trustees for the purpose of the S. L. Acts.
- (g) Bragge v. Wiseman (1615), 1 Brown. & G. 22. As to agreements for leases by a tenant for life in excess of his power, see infra, p. 55.

(h) Sutton's Case (1701), 12 Mod. 557. (i) Doe v. Butcher (1778), 1 Dougl. 50; Doe v. Archer (1796), 1 B. & P. 531; Roe v. Ward (1789), 1 H. Bl.

- 96. But under 14 & 15 Vict. c. 25, the tenant at rack rent of a farm, whose tenancy determines by the death of his landlord, is entitled, instead of emblements, to hold the farm till the expiration of the current year of the tenancy.
- (k) Ludford v. Barber (1786), 1 T. R. 90; James v. Jenkins (1757), Bull. N. P. 96 b; Jenkins v. Church (1776), Cowp. 482.
- (l) Smith v. Widlake (1877), 3 C. P. D. 10; Doe v. Watts (1797), 7 T. R. 83. See infra, Chap. II., sect. 3.
- (m) Stiles v. Cowper (1748), 3 Atk. 692. See Dann v. Spurrier (1802), 7 Ves. 231, 235; Pilling v. Armitage (1806), 12 Ves. 78, 88.

(n) 40 & 41 Vict. c. 18.

(o) I.e., the Chancery Division of the High Court; and also, as to

interests of all parties entitled under the settlement, to authorize leases (sect. 4), or preliminary contracts for leases (sect. 8), either of the whole or any parts (sect. 6) of any settled estates, or of any rights or privileges over or affecting any settled estates (p), for any purpose whatsoever, whether involving waste or not, subject to the conditions specified in the Act (q).

Requisites for leases.

Every such lease must be made to take effect in possession at or within one year after the making thereof, and the term created must not exceed: for an agricultural or occupation lease, twenty-one years in England and thirty-five years in Ireland; for a mining lease, or a lease of water-mills, way-leaves, water-leaves, or other rights or easements, forty years; for a repairing lease, sixty years; and for a building lease, ninety-nine years. But any such lease (except an agricultural lease) may be for such term as the Court directs, where the Court is satisfied that it is the usual custom of the district, and beneficial to the inheritance, to grant the lease for a longer term than the term hereinbefore specified in that behalf; though the Court may not authorize any lease which could not have been authorized in the settlement by the settlor (sect. 39), or where a private Bill for the same purpose has been rejected by Parliament (sect. 32) (r).

IV. LEASES UNDER POWERS.

Leases under powers.

Settlements and wills often expressly empower tenants in tail or for life, or trustees (s), to grant leases. To these powers of leasing there are generally attached conditions and restrictions which must be carefully observed by the person exercising the

estates within their respective jurisdictions, the Palatine Courts of Lancaster and Durham: sect. 44; 52 & 53 Vict. c. 47, s. 10.

(p) See the definition of "settlement" and "settled estates" in sect. 2.

(q) See sect. 48 as to evidence of execution of counterpart by lessee.

(r) See sect. 4 as to the other conditions to be observed. As to best rent see Re Rawlins' Estate (1865). L. R. 1 Eq. 286; as to capitalizing part of a mining rent, sects. 4, 34, Re Maynard (1899), 43 Sol. Journ. 676; as to surrender and renewal of leases, sect. 7, Easton v. Penny (1892), 67 L. T. 290; as to approving particular lease or vesting

general power of leasing in trustees, sects. 10, 13, Re Houghton's Estate (1894), W. N. p. 20; as to execution of lease, sect. 12; and as to its validity, sect. 40. ('f. Conveyancing Act, 1881, s. 70 (1), (2). The settlement can by express declaration exclude the powers of the Act: sect. 38; Re Peake's S. E., [1893] 3 Ch. 430. As to leases of copyholds, sect. 56; Easton v. Penny, supra; and as to procedure, sects. 11, 23—31, 41. See, too, Bainbridge on Mines, 5th ed. p. 236.

(s) Where a power is given to trustees who disclaim, it cannot be exercised by the heir-at-law on whom the estate devolves: Robson v. Flight

(1865), 4 D. J. & S. 608.

power, or the lease made under it will be void as against persons entitled in remainder or reversion (t), except in the cases provided for by the statutes mentioned hereafter. And, apart from express restrictions, a lease made upon improper terms may be void as a fraudulent or unfair execution of the power (u). Leases not made in accordance with the terms of the power are good, however, as between the parties to them by way of estoppel (x).

In the construction of powers the intention of the parties is to Construction prevail (y). Subject to that principle, the restraints imposed by a limited power given to a tenant for life are to be taken strictly against him, where they are imposed for the benefit of the remainderman (z).

of powers.

The donee of a power of leasing cannot lease to himself. has been said, upon the authority of a statement by Page-Wood, power to V.-C. (a), based on some old cases, that such a donee can, never-himself or to theless, lease to a trustee for himself. If that be so, it is a perfect himself. anomaly, and it would nowadays be, it is conceived, decidedly unsafe for any such donee to grant a lease to a trustee for himself, or for anyone to accept the assignment of a lease granted to such a trustee, on the assumption that the Courts would hold themselves bound by the above statement (b).

It Lease by donee of a trustee for

The restrictions contained in powers of leasing have reference to-

- (1) The property allowed to be leased.—Under a power to lease "lands usually demised," it seems that lands which have not been in lease within twenty years previously cannot be demised (c). But lands which have been previously leased, although not before leased together, may be included in the same lease (d). Where in a settlement there was a power to let any part of the settled estates "so as the usual rents" were
- (t) Doe v. Cavan (1794), 5 T. R. 567. Though supported at law by the legal estate in the trustees, the lease will be bad in equity as a breach of trust: Bowes v. East London Waterworks Co. (1818), 3 Mad. 375, 383; Jac. 324. And as to conformity between the lease and the power, see Doe v. Wilson (1822), 5 B. & A. 363.
- (u) Taylor v. Horde (1757), 1 Burr. p. 125.
- (x) Yellowly v. Gower (1855), 11 Ex. 274. See infra, p. 74.
 - (y) Pomery \mathbf{v} . Partington (1790),

- 3 T. R. 665. As to the construction of powers to lease, see Sug. Powers, 8th ed. p. 712; Vivian v. Jegon (1868), L. R. 3 H. L. 285.
- (z) Orby v. Mohun (1706), Gilb. Eq. R. at p. 58.
- (a) In Bevan \mathbf{v} . Habgood (1860), 1 J. & H. 222, at p. 229.
- (b) Boyce v. Edbrooke, [1903] 1 Ch. 836, at pp. 843, 847.
- (c) Sug. Powers, 728. See Co. Litt. 44 b.
- (d) Due v. Stephens (1846), 6 Q. B. 208; Doe v. Rendle (1814), 3 M. &S. 99.

reserved, a lease of tithes which had never before been let was held void (e). A power to lease settled estates "or any part thereof" will not authorize a lease of part of the lands with liberty to sport over the rest: for a power to lease land cannot enable the donee of the power to impose a burden on the land (f).

Generally, if the power does not mention mines, a lease may be made of open mines (g), but not of unopened mines: if the power specifies mines, then (i), if there are any open mines on the lands, such open mines only can be leased, and (ii) if there are no open mines, a lease may be made of unopened mines (h). But the general rule may of course yield to a sufficient indication of contrary intention. Thus where a testator gave his trustees a general unrestricted power to lease any portion of his estates, saying nothing about mines or minerals, and after his death coal was found under part of his estates on which there had never been any open working, it was held that, under the power, the trustees might grant a mining lease of the unopened minerals (i).

Where, under a settlement, the tenant for life has power to lease "all or any part or parts" of the settled lands for building purposes, and has also power to lease any mines either with or without the surface lands, those powers enable him (independently of the provisions of sect. 6 of the Settled Land Act, 1882,) to grant building leases reserving the minerals under the lands leased (k).

(2) The kind of lease to be granted.—Under a power to grant building leases, a mere repairing lease, not containing any obligation to build, will be invalid (l). Under a power to grant repairing leases, a lease containing the ordinary covenants to repair and to deliver up in repair will be valid without any express covenant to spend a particular sum in repairs (m). In a

⁽e) Pomery v. Partington (1790), 3 T. R. 665.

⁽f) Dayrell v. Houre (1840), 12 A. & E. 356; explained in Re Gladstone, [1900] 2 Ch. at p. 105; and commented upon in Brown v. Peto, [1900] 2 Q. B, at pp. 659, 660, 663.

⁽y) As to tenant for life's right to income arising from lease (by settlement trustees) of open mines, see Greville-Nugent v. Muir Mackenzie (1899), 16 T. L. R. 43.

⁽h) Clegg v. Rowland (1866), L. R. 2 Eq. 160; Farwell on Powers,

²nd ed. p. 602; MacSwinney on Mines, 2nd ed. p. 184.

⁽i) Re Barker, Wallis v. Barker (1903), 88 L. T. 685.

⁽k) Re Duke of Rutland's Settled Estates, [1900] 2 Ch. 206.

⁽¹⁾ Jones v. Verney (1739), Willes, 169; Hullett to Martin (1883), 24 Ch. D. 624.

⁽m) Easton v. Pratt (1863), 2 H. & C. 676; Truscott v. Diamond Rock Boring Co. (1882), 20 Ch. D. 251.

case where the tenant for life was authorized to grant such mining lease as he should think proper, it was held that he might grant a lease at a peppercorn rent by way of mortgage for securing a sum paid to himself (n).

(3) The length of lease to be granted.—Under a power to lease for not exceeding twenty-one years, or for three lives, a lease cannot be made for ninety-nine years determinable on three lives (o). Of course a lease may be made for a less interest than, but of the same nature as, that specified in the power (p). And under a power to lease for not exceeding twenty-one years a lease may be made for twenty-one years determinable at seven or fourteen years at the option of either lessor or lessee (q). Where under a similar power a lease had been granted for twenty-six years, it was held valid for twenty-one (r).

If no term is mentioned in the power, the provisions of the instrument creating the power will be looked at to see whether any intention appears as to the length of leases to be granted (s).

(4) The rent to be reserved.—Under a power to lease "at the best rent," of course no fine nor anything in the nature of a fine can be taken on the lease. One criterion as to whether the best rent has been obtained is whether the lessor has got as much for his successors as he has for himself; if he has got more for himself than for his successors, that is decisive evidence against him (t). But even if the lease is fair in this respect, it will be invalid (u) if it does not reserve the best rent which a prudent owner could obtain. The lessor need not accept the highest offer of rent. It is proper to have regard to other considerations, such as the solvency and eligibility of the tenant (x), but a lease must not be granted at less than the best rent in consideration of the tenant's executing improvements on the demised property (y). The rent

⁽n) Mostyn v. Lancaster (1883), 23 Ch. D. 583.

⁽o) Roe v. Prideaux (1808), 10 East, 158.

⁽p) Isherwood v. Oldknow (1815), 3 M. & S. 382.

⁽q) Edwards v. Millbank (1859), 4 Drew. 606; Muskerry v. Chinnery (1835). Ll. & Goo. 229. But see Lore v. Swift (1814), 2 Ball & B. 536.

⁽r) Campbell v. Leach (1775), 2 Amb. 740.

⁽a) Virian v. Jegon (1867), L. R. 2 C. P. 422; L. R. 3 H. L. 285. See Sheehy v. Muskerry (1848), 1 H. L. C.

^{576.}

⁽t) Montgomery v. E. of Wemiss (1817), 5 Dow. p. 344.

⁽u) Cf. Re Handman and Wilcox's Contract (where the lease discussed had been granted under the Settled Land Act, 1882), [1902] 1 Ch. 599.

⁽x) Doe v. Radcliffe (1808), 10 East, 278; Dyas v. Cruise (1845), 2 Jo. & Lat. 460, 482.

⁽y) Roe v. Archbishop of York (1805), 6 East, 86. But see Shannon v. Brudstreet (1803), 1 Sch. & Lef. 52, p. 72.

must generally be reserved at the same rate throughout the whole term granted by the lease (z).

Under a power to grant a lease containing "usual covenants," the covenants to be inserted are, it is conceived, such as would be inserted in a lease which is stipulated to contain such covenants (a). If the power requires that the lessee shall not be made dispunishable for waste, a covenant by the lessor to keep a part of the demised premises in repair renders the lease invalid (except by estoppel as between the parties to it), since it impliedly permits the lessee not to repair that part, and so exempts him from punishment for permissive waste (b).

A power to grant leases "to any person or persons" the trustees should think fit authorizes a lease to a limited company (c).

Lease must be in possession.

Unless the power expressly or impliedly (d) authorizes leases in reversion, the lease must be made to begin at once (e), and, it would seem, must be made to take effect in possession (f); but the lease may contain a covenant for renewal, and when the time for renewal comes a fresh lease may be granted according to the covenant, provided the terms as to rent and otherwise are then proper for a lease granted in pursuance of the power (g). So an agreement for a new lease made before the expiration of the old lease is good (h). A lease is treated as a lease in possession although the premises are occupied by tenants at will or yearly tenants, if they are directed by the lessor to pay their rents to the lessee (i).

No confirmation of void lease. If the lease is void, it is, according to the ordinary rule, incapable of confirmation (k), and acceptance of rent by the remainderman does no more than create a tenancy from year

(z) Doe v. Harrey (1823), 1 B. & C. 426. But see Earl of Londale v. Lowther, [1900] 2 Ch. 687.

(a) See infra, p. 154. Cf. Morris v. Rhydydefed Colliery Co. (1858), 3

H. & N. 885.

- (b) Yellowly v. Gower (1855), 11 Ex. 274, at pp. 293, 294. As to permitting tenant to pull down outbuildings and use the material for rebuilding, see Doe v. Stephens (1844), 6 Q. B. 208.
- (c) Re Jeffcock's Trusts (1882), 51 L. J. Ch. 507.
 - (d) Sug. Powers, 8th ed. 754.
- (e) Sussex v. Wroth (1582), Cro. Eliz. 5, 6 Rep. 33 a; Shecomb v.

Hawkins (1613), Cro. Jac. 318; Bowes v. East London Waterworks (1821), Jac. p. 330.

(f) Sug. Powers, 8th ed. 772.

- (g) Gus Light and Coke Co. v. Tourse (1887), 35 Ch. D. 519; Dyas v. Cruise, 2 Jo. & Lat. 460, p. 486; though see Harnett v. Yeilding (1805), 2 Sch. & Lef. 549.
- (h) Shannon v. Bradstreet, 1 Sch. & Lof. 52; Dowell v. Dew (1842), 1 Y. & C. C. C. 345.
- (i) Gundtitle v. Funucan (1781), 2 Doug. 565.
- (k) Co. Litt. 295 b; Doe v. Watts (1797), 7 T. R. 83; Bowes v. East London Waterworks (1821), Jac. p. 331.

to year on the terms of the lease; and this is the case whenever the lease is derived out of an estate of freehold merely, as when it is granted by a tenant for life. But if the lease is granted by a tenant in tail, and so derived out of an estate of inheritance, it is not void, but voidable, and acceptance of rent by the remainderman will operate as a confirmation (l). A tenant for life who agrees to grant a lease beyond the limits of his power is bound to grant a lease for his own life (m), and, it seems, to allow compensation (n).

Where a lease granted in purported exercise of a power is Relief in void at law through failure to comply with any mere formality equity against defective required by the power, equity will interpose and secure for the execution lessee a valid lease under the power (o). This is in accordance with the general principle that equity assists the defective execution of a power, as opposed to its non-execution (p), where the person seeking relief is a purchaser for value (q), a lessee (including, perhaps, a lessee at rack rent) being a purchaser pro tanto, and so falling within this category (r). Moreover, an agreement by a tenant for life to grant a lease under the power will be enforced after his death against the remainderman (s), provided it was binding on the tenant for life (t). But, in the case of a parol agreement for a lease by a tenant for life in part performed in his lifetime, the intended lessee cannot, as against the remainderman, obtain specific performance on the ground of part performance (u), unless, after the death of the tenant for life, the remainderman has, with knowledge of the agreement, permitted the part performance to go on (x).

A valid contract by the tenant for life to grant a lease under

(1) See Bac. Abr. (D.) 651.

of power.

⁽m) Cf. Dyas v. Cruise (1845), 2 Jo. & Lat. 460; Byrne v. Acton (1721), 1 Bro. P. C. 186.

⁽u) Leslie v. Crommelin (1867), 2 Ir. K. Eq. 134.

⁽v) Doe v. Weller (1798), 7 T. R. p. 480; Clark v. Smith (1842), 9 C. & F. p. 141; Sug. Powers, 8th ed. pp. 564 et seq.

⁽p) See Shannon v. Bradstreet (1803), 1 Sch. & Lef. p. 62.

⁽⁹⁾ Notes to Tollet v. Tollet (1728), 2 Wh. & T. 7th ed. 289.

⁽r) Sug. Powers, 8th ed. 566, 567, referring to Long v. Rankin (1822), reported in the Appendix, p. 895, see

particularly p. 900; Campbell v. Leach (1775), 2 Amb. 740; Re King's Leasehold Estates (1873), L. R. 16 Eq. p. 525. Cf. Donnell v. Church (1842), 4 1r. Eq. R. 630.

⁽s) Shannon v. Bradstreet (1803), 1 Sch. & Lef. 52; *Dowell* v. *Dew* (1842), 1 Y. & C. C. C. 345.

⁽t) Morgan v. Milman (1853), 3 D. M. & G. 24; Kennan v. Murphy (1879), 6 L. R. Ir. 108. See 8 L. R. Ir. 285.

⁽u) Shannon v. Bradstreet, 1 Sch. & Lef. at p. 72.

⁽x) Stiles v. Couper (1748), 3 Atk. 692; and see Fry on Spec. Perf. 4th ed. p. 260.

the power may be carried out by trustees after his death (y). But where the tenant for life of a settled estate agreed, in intended exercise of a leasing power, to grant to the existing lessees of some way-leaves a new lease of them, and for several years possession was had and rent paid under the agreement, but the Court after his death held it to have been ultra vires the tenant for life, specific performance at the suit of trustees for the infant remainderman in tail was refused (z).

Where equity will not relieve.

Equity will not aid a defective execution of a statutory power (a), nor will it interpose where there has been a substantial departure from the terms proper for a lease under the power, as where the best rent has not been reserved, or there has been an agreement to grant a lease in futuro(b); or a necessary consent has not been obtained (c); or where, under a power to lease with usual covenants, an unusual covenant, e.g., "in case of fire the lessor to rebuild or the lessee may quit," has been inserted (d).

Statutory relief.

12 & 13 Vict. c. 26; 13 & 14 Vict. c. 17.

Relief against the defective execution of powers of leasing is given by the Leases Act, 1849, as amended by the Leases Act, Under sect. 2 of the former Act, where a lease, which is **1850.** invalid against the remainderman by reason of some failure to comply with the terms of the power, has been made bona fide, and the lessee has entered thereunder (e), it operates in equity as a contract for a grant, at the request of the lessee, of a corresponding valid lease under the power; but the lessee is not entitled to a new lease with a variation if the remainderman is willing to confirm the existing lease without variation. On the other hand, under this Act the lessee was not bound to take a valid lease. Under the Act of 1850 this was altered, and the lessee was bound to accept from the remainderman a confirmation of the existing lease, such confirmation to be by memorandum or note in writing signed by the parties or their agents (f). And with regard to confirmation in other cases, the Act of 1850,

(y) Davis v. Harford (1882), 22 Ch. D. 128. (a) Darlington v. Pulteney (1775), Cowp. p. 267.

(b) Sug. Powers, 8th ed. p. 568. See Campbell v. Leach (1775), 2 Amb. 740.

- (c) Lawrenson v. Butler (1802), 1 Sch. & L. 13.
- (d) Medwin v. Sandham (1789), 3 Swanst. 685.
- (e) See Moffatt v. Gough (1878), 1 L. R. Ir. 331.
 - (f) Act of 1850, s. 3.

⁽z) Ricketts v. Bell (1847), 1 De G. & Sm. 335, 346. It was, however, recognized by the Vice-Chancellor (Knight-Bruce) that (see p. 344) ordinarily, just as a valid contract for a lease made by a tenant for life can be enforced against the remainderman, so the remainderman is entitled to enforce such a contract. See Fry on Spec. Perf. 4th ed. p. 205.

repealing sect. 3 of the Act of 1849, prevented mere acceptance of rent from operating as a confirmation, and by sect. 2 imposed the condition that upon or before the acceptance of rent a memorandum or note in writing confirming the lease must be signed by the person accepting the rent or his agent (g). The result of these enactments is that the lessee is entitled to have either a lease under the power or a confirmation of the invalid lease, but the remainderman can elect in favour of confirmation, and, if he does so elect, the lessee must accept the confirmed lease, but the confirmation must be in writing (h). The Leases Act, 1849, also provides for the validating of leases, granted in the intended exercise of a power of leasing, which are invalid at the time they are granted, but which the grantor subsequently becomes capable of granting under the power (i); and leases granted by the donee of the power, although not referring to it, are deemed to be granted in intended exercise of the power, if they cannot otherwise have effect (k). The Act does not extend to leases by ecclesiastical corporations or charities (l).

The Leases Act, 1849, will not validate a lease which in its actual form could not be granted under the power—as a building lease invalid through want of a covenant to build—by turning it into a lease of a substantially different kind (m), nor will it assist a lease made by a stranger to the power (n).

A lease by deed attested by two witnesses is a valid execution of the power, notwithstanding that some further or other formalities relating to execution and attestation are expressly required by the terms of the power (o).

TRUSTEES AND PERSONAL REPRESENTATIVES

Trustees, who are not expressly empowered to lease, will be Trustees. justified in letting the trust property from year to year where such letting is advantageous to the estate and necessary to prevent loss or deterioration (p). Possibly, too, trustees can grant

⁽y) See Ex parte Cooper (1864), 34 L. J. Ch. 378.

⁽h) See Sug. Powers, 8th ed. p. 571.

⁽i) Sect. 4.

⁽k) Sect. 5. (1) Sect. 7.

⁽m) Hallett to Martin (1883), 24 Ch. D. 624. Cf. (tas Light and Coke Co. v. Towse (1887), 35 Ch. D. p. 539.

⁽n) Ex parte Cooper (1865), 2 Dr. & Sm. 312, p. 320.

⁽o) Law of Property Amendment Act, 1859 (22 & 23 Vict. c. 35), s. 12.

⁽p) See the judgment of Little, V.-C. [of the Duchy of Lancaster], in Oceanic Steam Navigation Co. v. Sutherberry (1880), 16 Ch. D. p. 239; and the judgment of Jessel, M.R. in that case at p. 243.

leases of reasonable duration, consistent with the fair management of the estate (q), such as a lease for ten years (r); but this has been doubted (s). At any rate, in the absence of any statutory or other power enabling him, a trustee is not justified in granting a mining lease, since this involves the abstraction of a part of the settled property (t). Trustees holding two distinct properties upon different trusts cannot, except perhaps under very special circumstances, and with special provisions for the protection of the interests of each estate, grant one lease comprising the whole of such properties (u).

A lease granted for too long a term to a lessee who has notice of the trusts will be set aside (x).

Primâ facie a trust for sale is inconsistent with granting a lease, but there may be circumstances which justify trustees for sale in departing from the words of the trust (y); for instance, perhaps, where they have endeavoured without success to sell the property by public auction and by private contract (z). It is a breach of trust for a trustee to grant a lease containing an option to the lessee to purchase the demised property at a future time at a fixed price (a).

As in the case of other joint tenants (b), all the trustees must join in granting the lease.

Liability of trustees.

A person in whom a lease is vested, whether as original lessee or as assignee, is directly liable to the lessor, notwithstanding

(q) See Att.-Gen. v. Owen (1805), 10 Ves. p. 560; and per Lord Erskine, C., in Middleton v. Dodswell (1806), 13 Ves. p. 268.

(r) Naylor v. Arnitt (1830), 1 Russ. & M. 501; Fitzpatrick v. Waring (1882), 11 L. R. Ir. 35; Lewin on Trusts, 10th ed. 707, 708. See, as to repairing leases of property vested in trustees, Newton v. Lucas (1845), cited 10 Beav. 543.

(s) Wood v. Patteson (1847), 10 Beav. 541, and Re Shaw's Trusts (1871), L. R. 12 Eq. 124, where Wickens, V.-C., said he thought that Naylor v. Arnitt, supra, was not a case to be followed.

(t) Wood v. Patteson, supra, distinguished in Fitzpatrick v. Waring, supra. In Wood v. Patteson, the legal estate was in the trustees, and the lease would have been beneficial to infant remainderman. As to mining

leases generally, see infra, pp. 192 et sea.

(u) Tolson v. Sheard (1877), 5 Ch. D. 19, 25.

(x) Malpas v. Ackland (1827), 3 Russ. 273.

(y) Evans v. Jackson (1836), 8 Sim. 217, 218. See Nicholls v. Corbett (1865), 34 Beav. 376.

(z) See the circumstances in Errors v. Jackson, 8 Sim. 217; also the judgment of Jessel, M.R., in Occuric Steam Navigation Co. v. Sutherberry (1880), 16 Ch. D. at p. 243.

(a) Oceanic Steam Navigation Co. v. Sutherberry (1880), 16 Ch. D. 236. See Clay v. Rufford (1852), 5 De G. & Sm. 768, 779, and similarly, as to a lease containing a covenant for renewal at a fixed rent, Salamon v. Sopwith (1877), 35 L. T. 826.

(b) Infra, p. 63.

that he holds only as trustee (c). In a recent Privy Council case, where the trustees of an ordinary social club had accepted on behalf of the club a lease containing onerous lessees' covenants, it was held that the lessees, as trustees, were entitled to be indemnified against their liabilities under the covenants out of any property of the club to which their lien as trustees extended, but not by the members of the club personally (d). The lessor is, generally, confined to his legal remedy by distress or action against the trustee, and cannot sue the beneficiaries (e), though under special circumstances an account has been directed against a company beneficially interested in a mining lease (f). So where, in a lease of a house, the lessee covenanted to repair, and there was a declaration that he held the premises in trust for his wife (who was a party to the lease) as part of her separate estate, and at the end of the term the premises were out of repair, it was held that the wife was not liable for breach of the repairing covenant, either on the ground of her beneficial interest under the above declaration, or by reason of the fact that she had occupied the premises and paid the rent throughout the term. There was no privity of contract between her and the lessor (g).

In connection with the topic of the liability of trustees as Incidence of lessees, reference may be made to the recent case of Re improve-Partington (h). There, under a will, trustees held long lease-ments. holds upon trust, out of the rents and profits, to pay the ground rents and perform the lessee's covenants (which included a covenant to do works which would be improvements within the meaning of the Settled Land Acts), and subject thereto upon trust for a tenant for life, with remainders over. Money having been expended upon improvements, it was held that, as the trust to perform the covenants came before the trust for the tenant for life, the expenses must be borne by income, and, further, that even if the Court had a discretionary power, under sect. 15 of the Settled Land Act, 1890, to direct payment of the expenses out of capital, the discretion under that section ought not, in view of the provisions of the will, to be exercised in favour of the tenant for life.

⁽r) White v. Hunt (1870), L. R. 6 Ex. 32.

⁽d) Wise v. Perpetual Trustee Co., [1903] A. C. 139.

⁽e) Walters v. Northern Coul Mining Co. (1855), 5 D. M. & G. p. 641.

⁽f) Wright v. Pitt (1870), L. R. 12 Eq. 408.

⁽g) Ramaye v. Womack, [1900] 1 Q. B. 116.

⁽h) [1902] 1 Ch. 711.

Executors and administrators.

It has been said that executors and administrators, as they may dispose absolutely of terms for years vested in them in right of their testators or intestates, so may they lease the same for any fewer number of years (i). But though this is the rule at law, and an underlease by an executor or administrator may be supported also in equity, yet it is an exceptional mode of dealing with the assets, and those who accept such a title take it subject to the question whether it was the best way of administering them (k). A lease by a personal representative with an option of purchase cannot be supported (l), and a lease to a party having notice that a sale was required by the persons beneficially interested has been set aside (m).

An administrator durante minore ætate has, during the minority, the same powers as an ordinary administrator. The property vests in him, and he can grant leases that will be valid at any rate during the minority (n). And an administrator durante absentiâ also has the powers of an ordinary administrator (o).

An administrator ad colligenda bona defuncti has been appointed for (among other purposes) the acceptance of a renewal of a lease (p); and it would seem that under the modern practice power may be given to such an administrator to grant a lease where it is for the benefit of the absent or unknown next of kin(q).

An administrator cannot make a lease until letters of administration have been granted to him (r). Until that event the effects of the deceased do not vest in him (s), though the grant when made has relation back to the death of the intestate, so as to give the administrator a title to the chattels, real and personal, of the intestate from the time of his death (t).

(i) Bac. Abr. (I. 7) 781. See *Middleton* v. *Dodswell* (1806), 13 Ves. p. 268.

(k) Oceanic Steam Navigation Co. v. Sutherberry (1880), 16 Ch. D. 236. See per Sugden, L.C., in Keating v. Keating (1835), Lloyd & G. temp. Sugden, p. 136; Hackett v. Macnamara (1836), Lloyd & G. temp. Plunkett, 283.

(l) Oceanic Steam Navigation Co. v. Sutherberry, supra.

(m) Drohan v. Drohan (1809), 1 Ball & B. 185.

(n) Finch's Case (1607), 6 Rep. 67 b; Re Cope (1880), 16 Ch. D. 49; Re Thompson and M'Williams' Contract (1896), 1 Ir. R. 356. See

38 Geo. 3, c. 87, ss. 6, 7.

(o) 1 Wms. on Executors, 9th ed. p. 433.

(p) In the goods of Clarkington (1861), 2 Sw. & Tr. 380.

(q) In the goods of Schwerdtjeger (1876), 1 P. D. 424, where such an administrator was empowered to dispose by sale of the premises and business of the deceased.

(r) See Wankford v. Wankford (1700), 1 Salk. at p. 301.

(s) See 21 & 22 Vict. c. 95, s. 19.

(t) Patten v. Patten (1833), Alcock & Napier, 493, 504. See judgment in R. v. Horsley (1807), 8 East, p. 410; judgment in Barnett v. E. of Guildford (1855), 11 Ex. p. 32.

An executor, on the other hand, may demise before probate (u); and if he dies before probate the lease will be valid (x) provided the will is subsequently proved (y).

A lease by one of several executors (z) or administrators (a)is good, personal representatives herein differing from other joint tenants, each of whom can only deal separately with his own share (b).

After judgment in an administration action, all powers of management vested in a trustee or personal representative are subject to the control of the Court (c); and the sanction of the Court should be obtained to any lease of the property in course of administration (d). But it has been held that a mere administration judgment, no receiver having been appointed or injunction granted to prevent the executor from dealing with the assets, will not take away his legal powers so as to invalidate the title of persons claiming under a disposition made by him in exercise of those powers (e).

By sect. 1 of the Land Transfer Act, 1897 (f), it is provided Real reprethat, where real estate (g) is vested in any person without a right in any other person to take by survivorship, it shall on his death, notwithstanding any testamentary disposition, devolve to and become vested in his personal representatives or representative from time to time as if it were a chattel real vesting in them The section applies only in cases of death after the 31st of December, 1897 (h). The personal representatives (i) hold the real estate as trustees for the persons by law beneficially entitled thereto, and in due course it is to be made over, by assent or conveyance, to them; but it is subject in the first

- W. Bl. 692, 694.
- (r) Wankford v. Wankford (1700), 1 Salk. p. 308; Brazier v. Hudson (1836), 8 Sim. 67.
- (y) See Johnson v. Warwick (1856), 17 C. B. 516.
- (z) Doe v. Sturges (1816), 7 Taunt. at p. 222; Simpson v. Gutteridge (1816), 1 Madd. p. 616.
- (a) See Jacomb v. Harwood (1751), 2 Ves. Sen. p. 267.
 - (b) *Infra*, p. 63.
- (c) Webb v. E. of Shaftesbury (1802), 7 Ves. 480; Bethell v. Abraham (1873), L. R. 17 Eq. p. 26.
- (d) See the decree in Webb v. E. of Shuftesbury, supra, at p. 484, and the

- (u) Roe v. Summerset, (1770), 2 observations of Lord Eldon at p. 488.
 - (e) Berry v. Gibbons (1873), 8 Ch. 747, 750.
 - (f) 60 & 61 Vict. c. 65.
 - (g) The expression "real estate" in sects. 1—5 of this Act does not include land of copyhold tenure or customary freehold in any case in which an admission or any act by the lord of the manor is necessary to perfect the title of a purchaser from the customary tenant: Act of 1897, s. 1 (4).
 - (h) Sects. 1 (5), 25.
 - (i) Where a testator leaves executors, his real estate vests in all of them, and not in those only who prove: Re Pawley and London, &c., Bank, [1900] 1 Ch. 58.

instance to administration, and the powers, rights, duties, and liabilities of personal representatives in respect of personal estate apply to the real estate, so far as the same are applicable, as if the real estate were a chattel real vesting in them, except that some or one only of several joint personal representatives cannot sell or transfer the real estate without the authority of the Court (k). It is conceived that, consequently, the executors or administrators of a testator who has died after the 31st of December, 1897, have power to let his real estate, but that this power is subject to the remarks made in Oceanic Steam Nacigation v. Sutherberry (1), and should only be exercised under exceptional And, further, a lease so granted must not circumstances. contain an option of purchase (l). The executors can exercise their powers before probate, but in the case of an intestacy it is not clear in whom the legal estate is vested pending the grant of administration. In relation to the similar provision of sect. 30 of the Conveyancing Act, 1881, with regard to trust and mortgage estates, the question whether, in the absence of an administrator of a deceased sole trustee, the estate vests in the heir-at-law, has been raised, but left undecided (m).

A good deal is to be said, and has been said (n), for the view—which is not without judicial support (o)—that, where an owner of real estate dies intestate after the coming into operation of the Land Transfer Act, 1897, the legal estate is in his heir-at-law during the interval between the death of the intestate and the grant of letters of administration. But, until the question has been authoritatively settled (p), it will practically not be safe, it is conceived, during any such interval to accept a lease from the heir-at-law, or indeed to act in any respect upon the assumption of his possessing any of the rights or powers of a landlord.

pending the grant, the legal estate either is in abeyance, or is (by virtue of sects. 12 and 16 of the Judicature Act, 1873) vested in the Judges of the High Court, as representing the Judge of the Court of Probate, in whom an intestate's personalty was vested, pending the grant of letters of administration, by the Court of Probate Act, 1858 (21 & 22 Vict. c. 95), s. 19. See Tyssen, Real Representative Law, p. 19; and article in 42 Sol. Jo. at p. 830.

⁽k) Sects. 2, 3.

^{(1) (1880) 16} Ch. D. 236; supra, p. 60.

⁽m) Re Pilling's Trusts (1884), 26 Ch. 1). 432.

⁽n) See Woodfall, L. & T. 17th ed. pp. 55, 56; Foa, L. & T. 3rd ed. p. 54; Brickdale & Sheldon's Land Transfer Acts, pp. 238, 239; Robbins & Maw on Devolution of Real Estate, &c., 3rd ed. pp. 31, 32.

⁽o) John v. John, [1898] 2 Ch. 573, at p. 576.

⁽P) It has been suggested that,

In cases of such intestacies, it will generally be expedient to obviate difficulties and questions by constituting an administrator without delay.

VI. CO-OWNERS.

Joint tenants (q) are seised per my et per tout (r), that is, each Joint tenants. of them has the entire possession as well of every parcel as of the whole (s); but for purposes of alienation, whether total or partial, each has an exclusive right to his own aliquot part, or undivided share (t). He may consequently lease his share either to another joint tenant, so as to create the relationship of landlord and tenant between them, with a right to distrain in respect of rent in arrear (u), or to a stranger (x). A lease by one joint tenant of his moiety, though made to commence after his death, will bind the joint tenant surviving (y). Where all the joint tenants join in a demise—and this is the only mode of creating an effectual lease of the whole property—the lessee holds the share of each under each separately, and also holds the whole under all. Consequently, if the tenancy is from year to year, any one of the joint tenants can give notice to quit (z), and upon the death of any the lessee holds the whole as tenant to the survivors, who may sue for the entire rent (a). If one of several joint tenants grants a lease of the joint property his share only will pass to the lessee (b).

One tenant in common may demise his share to another, who, Tenants in if he holds over as tenant on sufferance, will be liable in an action for use and occupation at the suit of the lessor (c); or he may lease it to a stranger, who then holds in common with the other

- (q) As to lease to partners, 2 Wh. & T. L. C. 7th ed. 961, notes to Lake v. Gibson.
- (r) See Murray v. Hall, 7 C. B. 455, note by Manning.
- (8) Co. Litt. 186 a; 2 Bl. Comm. 181.
 - (t) Co. Litt. 186 a.
- (u) But upon a sale of the entire property one co-owner is not entitled to deduct arrears of rent due from the occupying co-owner as against a mortgagee of such co-owner's share, though he might require the arrears to be satisfied by the occupying coowner before any part of the proceeds is paid to him: Hill v. Hickin, [1897] 2 Ch. 579.
 - (z) Cowper v. Fletcher (1865), 6 B.

- & S. 464; Co. Litt. 186 a; Bac. Abr. (I. 5) 776; Viner's Abridg. "Distress," I. 28.
- (y) Whitlock v. Horton (1605), Cro. Jac. 91.
- (z) Doe v. Summersett (1830), 1 B. & Ad. 135. See Jurdain v. Steere (1606), Cro. Jac. 83.
- (a) Henstead's Case (1594), 5 Rep. 10 a.
- (b) Bellingham v. Alsop (1605), Cro. Jac. 52; Co. Litt. 186 a. As to the authority of a partner to take a lease for partnership purposes, see Sharp v. Milligan (1856), 22 Beav. 606, 609.
- (c) Leigh v. Dickeson (1885), 15 Q. B. D. 60.

tenant in common (d). A demise by all the tenants in common, though joint in its terms, operates as a separate demise by each of his own undivided share, and a confirmation by each of the demise of his companions' shares (e); and it is the same as to a joint lease by coparceners (f).

But though the lease cannot be treated as a joint demise (g), yet it seems the tenants in common have a joint action for the rent (h), and if one dies the survivor may sue for the whole (i); or they may sever and each sue for his share (k). But they must join in suing on a covenant their interests in which are not divisible (l). Coparceners, however, constitute one heir (m), and one cannot claim a share of the rent separately (n), or, apparently, sue separately in ejectment upon a right of re-entry for breach of covenant (o).

Joint tenants for life.

Where under a settlement two or more persons are beneficially entitled to possession of settled land for life as tenants in common, or as joint tenants, or for other concurrent estates or interests, they together constitute the tenant for life for the purpose of the Settled Land Act, 1882 (p), and accordingly they must join in exercising the statutory power of leasing (q).

VII. COPYHOLDERS.

Lease by copy-holder (r).

By the general custom of the realm a copyholder may make a lease for one year (s), but if he makes a lease for a longer term,

(d) Co. Litt. 199 a.

(e) Thompson v. Hakewill (1865), 19 C. B. N. S. p. 726.

(f) Milliner v. Robinson (1600), Moore, 682.

(g) Burne v. Cambridge (1836), 1 Moo. & R. 539; Jurdain v. Steere (1606), Cro. Jac. 83; Mantle v. Wollington (1608), Cro. Jac. 166.

(h) See Last v. Dinn (1858), 28 L. J. Ex. 94.

(i) Wallace v. M'Laren (1828), 1 M. & Ry. 516.

(k) Martin v. Crompe (1699), 1 I.d. Raym. 340. See Cutting v. Derby (1776), 2 W. Bl. 1077.

(l) Thompson v. Hakewill (1865),

19 C. B. N. S. 713.

(m) Co. Litt. 163 b. (n) Decharms v. Horwood (1834), 10 Bing. 526.

(o) Doev. Lewis (1836), 5 A. & E. 277. (p) 45 & 46 Vict. c. 38, s. 2 (6).

If See supra, p. 41. Where one

undivided moiety has passed out of the settlement, see Cooper v. Belsey (1899), 47 W. R. 443, overruling Re Collinge's S. E. (1887), 36 Ch. D. 516; and see Williams v. Jenkins (1894), W. N. p. 176.

(r) As to approvement and letting by the lord of waste lands of the manor, see Stat. of Merton (20 Hen. 3, c. 4); 13 Edw. 1, c. 46; Northwick v. Stanray (1803), 3 B. & P. 346; Lascelles v. Lord Onslow (1877), 2 Q. B. D. 433, 451; Fawcett v. Strickland (1737), Willes, 57. A custom to grant leases of the waste of the manor without restriction is bad: Badyer v. Ford (1819), 3 B. & A. 153. A statutory power of leasing with the consent of three-fourths of the commoners is given by 13 Geo. 3, c. 81, s. 15.

(s) Malwick v. Luter (1588), 4 Rep. 26 a; Frosel v. Welch (1616), Cro. Jac. 403.

not warranted by the custom of the manor, and without the lord's licence, this is a forfeiture of his copyhold (t). The granting or refusing the licence is a matter wholly in the lord's discretion (u), and if he is only tenant for life, it seems that the licence, unless granted under a statutory or other power, will not support a lease after his death (x).

By the custom of probably most manors a licence to a copyholder to lease runs with the land, so as to enable a lease in pursuance of it to be made by his surrenderee, or after his death by his heir or devisee (y).

The restriction cannot be evaded by the grant of a succession of leases, each just within the period allowed by the custom (z); and a lease under a licence must be in the terms of the licence (a), or at any rate must have the same legal effect as if it were in such terms (b); but it may be for a period shorter than that permitted by the licence (c). A lease within the authorized period, with a covenant for renewal beyond the period, leaves the lessee to his remedy on the covenant, and does not pass such an estate as to cause a forfeiture (d); and an agreement for a lease subject to the lord's licence being obtained, under which the lessee has entered, binds him to the performance of the covenants stipulated for (e).

The lease granted in pursuance of the licence is a common law, and not a copyhold, interest. Hence it is customary to register building leases of copyhold lands in Middlesex (f). The lessee under a lease pursuant to a licence may assign or underlet without obtaining a new licence from the lord (g). The lease

- (t) Kensy v. Richardson (1599), Cro. Eliz. 728; Jackman v. Hoddesdon (1595), ib. 351.
- (u) Reg. v. Hale (1838), 9 A. & E. p. 341.
- (x) Petty v. Evans (1610), Brownlow & G. Part II. 40. As to the powers of limited owners of manors to grant licences to lease under the Settled Land Acts and the Settled Estates Act, 1877, see supra, p. 46.
- (y) Whitton v. Peacock (1834), 3 My. & K. at p. 335. See Scriven on Copyholds, 7th ed. 227.
- (2) Lutterel v. Weston (1613), Cro. Jac. 308; Mathews v. Whetton (1629), Cro. Car. 233.
- (a) Jackson v. Neal (1594), Cro. Eliz. 395.

- (b) Haddon v. Arrowsmith (1596), 1 Cro. Eliz. 461; Worledge v. Benbury (1618), Cro. Jac. 436.
- (c) Goodwin v. Longhurst (1597), Cro. Eliz. 535.
- (d) Fenny v. Child (1814), 2 M. & S. 255; Lady Montague's Case (1613), Cro. Jac. 301. See Rawstorne v. Bentley (1793), 4 Bro. C. C. 415.
- (e) Pistor v. Cater (1842), 9 M. & W. 315. Cf. Doe v. Clare (1788), 2 T. R. 739.
- (f) See Rigge on Registration, 87, note (m); Scriven on Copyholds, 7th ed. p. 227; Elton on Copyholds, 2nd ed. p. 94.
- (g) Johnson v. Smart (1615), 1 Roll. Abr. 508, pl. 14.

under the licence is not affected by a forfeiture by the copyholder(h).

Lease not under licence.

A lease not authorized by custom or licence is good against everybody save the lord (i), and even as between the parties to the lease and the lord, the unauthorized demise is only a ground of forfeiture which the lord may waive (k). Moreover, if the lord at the time of the lease is tenant for life, and dies before he has seized for the forfeiture, the remainderman cannot take advantage of it (l). A lease to commence in futuro is a cause of forfeiture in præsenti, since it is a good lease between the parties (m).

VIII. MORTGAGOR AND MORTGAGEE.

Leases by mortgagor, or mortgagee in possession. Conveyancing Act, 1881, s. 18.

Under sect. 18 of the Conveyancing Act, 1881 (n), a mortgagor of land (o), while in possession, has power, as against every incumbrancer, and a mortgagee of land, while in possession, has power, as against all prior incumbrancers, if any, and as against the mortgagor, to make (i) an agricultural or occupation lease for any term not exceeding twenty-one years, and (ii) a building lease for any term not exceeding ninety-nine years, subject to the requirements of the section (p).

Agreements.

A contract to make or accept a lease under the section may be Sub-sect. (12). enforced by or against every person on whom the lease, if granted, would be binding; and the provisions of the section Sub-sect. (17). apply, "so far as circumstances admit," to any letting, and to an agreement, whether in writing or not, for leasing or letting. Thus, where a parol lease would be valid, it can be made under the section, notwithstanding that some of its requirements cannot be complied with (q).

> (h) Clarke v. Arden (1855), 16 C. B. 227.

> (i) Bac. Abr. (I. 6) 776; Goodwin v. Longhurst (1597), Cro. Eliz. 535; Doe v. Tresidder (1841), 1 Q. B. 416.

(k) Doe v. Bousfield (1844), 6 Q. B. 492.

(l) Lady Montague's Case (1613), Cro. Jac. 301. See Doe v. Bousfield (1844), 6 Q. B. p. 493; Scriven on Copyholds, 7th ed. 221. According to Eustcourt v. Weeks (1698), 1 Salk. 186, the forfeiture cannot be taken advantage of by the heir.

(m) East v. Harding (1597), Cro. Eliz. 498.

(n) 44 & 45 Vict. c. 41.

(o) See infra, Chap. vii., Sect. iv., for the provisions of the Tenants' Compensation Act, 1890, with reference to tenancies of mortgaged holdings to which that Act applies.

(p) As to reserving the best rent, see Renner v. Tolley (1893), 68 L. T. 815; as to building leases, see subsect. (9). The section does not interfere with any express power of leasing contained in the mortgage deed: subsect. (14); and as to the effect of the statutory power, see sub-sect. (15).

(q) Wolstenholme's Conv. Acts,

8th ed. p. 67.

The above powers apply: (1) if the mortgage is made after Application 1st January, 1882, and a contrary intention is not expressed by Sub-sects. the mortgagor and mortgagee in the mortgage deed, or otherwise (13), (16). in writing; or (2) if by agreement in writing, made after 1st January, 1882, between mortgager and mortgagee, the provisions of sect. 18 of the Conveyancing Act, 1881, have been applied to a mortgage made before 1st January, 1882. But such agreement is not to prejudicially affect any right or interest of any mortgagee not joining in or adopting the agreement.

of sect. 18.

An "occupation lease" granted under the above 18th section "Occupation may comprise incorporeal hereditaments, such as sporting rights, as well as corporeal hereditaments. Accordingly a lease by a mortgagor in possession of a mansion-house, with the stables and gardens and part of the park, and the right of shooting over the rest of the mortgaged lands (which right had been reserved to the landlord on previous lettings of those lands to agricultural tenants), has been held to be valid, and binding upon the mortgagee (r).

A lease made under the Act by a mortgagor in possession Effect of takes effect as though the mortgagee had joined in granting it, statutory and any other property comprised in the mortgage is subject to power. the rights conferred by the lease in favour of the demised land (s). The mortgagee, on giving notice to the lessee and going into possession, is entitled by virtue of the Act to enforce the covenants and conditions in the lease in the same manner as if he had been a party to it, and such rights cannot be affected by any collateral agreement between the lessor and lessee (t). This is upon the ground that the mortgagee has "the reversionary estate" to which the rent and the benefit of the covenants and conditions are made incident by sect. 10 of the Conveyancing Act, 1881 (u).

With respect to leases made otherwise than under the statute, Leases not in or in exercise of a power contained in the mortgage deed, the the statute. following rules hold good:—

(a) Leases by Mortgagor.

Leases made before the mortgage are binding on the i. Leases mortgagee (x).

before mortgage.

⁽r) Brown v. Peto, [1900] 1 Q. B. 346; 2 Q. B. 653.

⁽⁸⁾ Wilson v. Queen's Club (1891), 3 Ch. 522.

⁽t) Municipal Building Society v. Smith (1888), 22 Q. B. D. 70.

⁽u) Infra, Chap. v., Sect. i. (5).

⁽x) Moss v. Gallimore (1779), 1 Doug. 279; 1 Sm. L. C. 11th ed. 514. See Rogers v. Humphreys (1835), 4 A. & E. 299.

ii. Leases after mortgage.

A lease made after the mortgage by a mortgagor in possession is good by way of estoppel between the parties to it (y), so that the lessor may recover the rent, and conversely is liable on his covenant for quiet enjoyment (z). But it is void as against the mortgagee, who may eject the lessee without any previous notice (a), subject, however, to the right of the lessee, if he so chooses, to redeem the mortgage (b).

Tenancy under mortgagee.

In order to create a tenancy between the mortgagee and the tenant let into possession by the mortgagor, there must be some evidence whence it may be inferred that such relation has been raised by mutual agreement (c). The mortgagee cannot, by merely giving the lessee notice of the mortgage, make the lessee his tenant (c); and the notice, though followed by continued occupation by the lessee, is not evidence of an agreement for a tenancy (d). But payment of rent by the lessee to the mortgagee may create a tenancy from year to year, so as to entitle the lessee to notice (e); and so, too, where the mortgagee demands the rent from the lessee for payment of his interest (f), or encourages him to lay out money in improvements (g), he cannot, after thus recognizing the lawfulness of the lessee's occupation, treat him as a trespasser and eject him without notice (h). And where a tenancy is created under the mortgagee, this is an entirely new tenancy—a tenancy by attornment, for instance, does not relate back to the notice of the mortgage (i)—and a tenancy from year to year arising upon payment of rent does not necessarily import the terms of the mortgagor's lease. Whether it does so or not is a question of fact (k). Practically the new

(y) See infra, p. 74; Doe v. Thompson (1847), 9 Q. B. 1037; Cuthbertson v. Irving (1860), 6 H. & N. 135.

(z) Hartcup v. Bell (1883), C. & E. 19.

(a) Keech v. Hall (1778), 1 Doug. 21; Thunder v. Belcher (1803), 3 East, 449. See per Littledale, J., in Pope v. Biggs (1829), 9 B. & C. p. 253, and per Lord Selborne in Lows v. Telford (1876), 1 App. Cas. p. 425.

(b) Tarn v. Turner (1888), 39 Ch. D. 456. See, too, Keith v. R. Gancia & Co., [1904] 1 Ch. 774, a

case of estoppel in pais.

(c) 1 Sm. L. C. 11th ed. 522; Evans v. Elliott (1838), 9 A. & E. 342.

(d) Towerson v. Jackson, [1891] 2 Q. B. 484; overruling Brown v. Storey (1840), 1 M. & Gr. 117, and (on this point) *Underhay* v. Read (1887), 20 Q. B. D. 209.

(e) Doe v. Ongley (1850), 10 C. B. 25. Cf. Wheeler v. Branscombe (1843), 5 Q. B. 373.

(f) Doe v. Hales (1831), 7 Bing. 322. Cf. Doe v. Cadwallader (1831), 2 B. & Ad. 473.

(g) Per Parke, B., in *Doe* v. *Hughes* (1847), 11 Jur. 698.

(h) As to an assignee from the mortgagee, see Smith v. Eggington (1874), L. R. 9 C. P. 145.

(i) Evans v. Elliott (1838), 9 A. & E. 342. Cf. Gladman v. Plumer (1845), 15 L. J. Q. B. 79.

(k) Oakley v. Monck (1866), L. R. 1 Ex. 159. See, too, per Joyce, J.,

tenancy under the mortgagee puts an end to the old tenancy under the mortgagor (l), on the ground that the entry of the mortgagee is a constructive eviction of the tenant by title paramount, and so the estoppel is terminated (m); and even if constructive eviction is not sufficient for this purpose (n), the lessee, if he pays rent to the mortgagee under threat of legal proceedings, can treat the payment as made on account of the mortgagor and so resist the demand of the latter (o).

(b) Leases by Mortgagee in Possession.

A lease granted by a mortgagee in possession, without the Leases by concurrence of the mortgagor, cannot after redemption stand mortgagee in possession. good as against the mortgagor (p), save, possibly, a lease made to avoid an apparent loss and merely in necessity (q). If the mortgagee grants a lease and puts the lessee in possession, the mortgagor may file a bill to redeem, and ask for an account against the mortgagee, as in a case of wilful default, and thereby raise the question whether the rent reserved was the best that could have been obtained (p). Independently, therefore, of the statutory power or of a conventional power of leasing, the mortgagor and the mortgagee should concur in leasing the mortgaged property, and in that case the instrument will operate as the demise of the mortgagee and the confirmation of the mortgagor (r). The lessee's covenants should be with the mortgagee (s); the covenant for quiet enjoyment should be by him; and the proviso for re-entry should empower him to re-enter (t).

A tenant for life of settled land who has mortgaged his life Mortgagor interest can, unless the mortgagee is actually in possession of the life. settled land or part thereof, exercise his power of leasing under the Settled Land Act, 1882 (u), provided the leases are made at

```
in Keith v. R. Gancia & Co., [1904]
1 Ch. at p. 783.
```

560.

⁽¹⁾ See Corbett v. Plowden (1884), 25 Ch. D. 678.

⁽m) Mayor of Poole v. Whitt (1846), 15 M. & W. 571.

⁽h) Delaney v. Fox (1857), 2 C. B. N. S. 768; Carpenter v. Purker (1857), 3 ib. 206.

⁽v) Johnson v. Jones (1839), 9 A. & E. 809; Underhay v. Read (1887), 20 Q. B. D. 209.

⁽p) See per Lord Romilly, M.R., in Franklinski v. Ball (1864), 34 L. J. Ch. at p. 154; S. C. 33 Beav.

⁽q) Hungerford v. Clay (1722), 9 Mod. 1.

⁽r) Doe v. Adams (1832), 2 Cr. & J. 232, 2 Tyr. 289; Smith v. Porklington (1831), 1 Cr. & J. 445.

⁽s) See Webb v. Russell (1789), 3 T. R. 393.

⁽t) Saunders v. Merryweather (1865), 3 H. & C. 902.

⁽u) 45 & 46 Vict. c. 38; supra, p. 41. See sect. 50 (3). Cf. Earl of Lonsdale v. Lowther, [1900] 2 Ch. 687, where leases were held to have been validly granted, under a power in a

the best rent that can reasonably be obtained, without fine, and in other respects are in conformity with the Act. If the mortgagee is in possession, the tenant for life retains his power of leasing under the Act, but it cannot be exercised without the consent of the mortgagee (x). Where a mortgagor tenant for life applies to the Court for an order under sect. 10 of the Settled Land Act, 1890 (y), authorizing a lease of the mansion house, &c., the Court must be satisfied that the mortgagee consents (z).

IX. JUDGMENT CREDITORS.

Judgment creditor.

A judgment creditor is entitled to be put in possession of the whole of the debtor's freehold and copyhold lands, and he then becomes tenant by elegit; but for the land to be bound by the judgment, not only must there be actual delivery in execution (a), but the writ must also be registered under the Land Charges Registration and Searches Act, 1888 (b). The estate of the tenant by elegit is liable to be determined at any time by payment of the debt (c), and a lease granted by him is of the same precarious nature (d).

X. AGENTS.

Agents.

An agent (e) to execute a lease by deed must be appointed by deed (f), but if the lease to be made by the agent is not under seal, he need not be authorized in writing (g).

Land agents, &c.

The fact of a landlord employing a steward or a land agent (h) to manage his property does not necessarily confer on the steward or land agent power to enter into contracts for granting leases of farms for terms of years (i); but a power to a land agent to "manage and superintend estates" authorizes him on behalf of his principal to enter into an agreement for a usual and customary

will, by a life tenant who had sold his life estate.

(x) S. L. A. 1882, s. 50 (3). As to leases where the tenant for life is bankrupt, see *Re Mansell's S. E.* (1884), W. N. p. 209.

(y) 53 & 54 Vict. c. 69.

(z) Re Sebright's S. E. (1886), 33 Ch. D. 429.

(a) 27 & 28 Vict. c. 112.

(b) 51 & 52 Vict. c. 51.

(c) Price v. Varney (1825), 3 B. & C. 733.

(d) 1 Platt on Leases, 722. But see Doughty v. Stiles (1673), Rep. t. Finch, 115.

(e) See Hamilton v. Clauricarde

(1762), 1 Bro. P. C. 341.

(f) Steiglitz v. Egyinton (1815), Holt, N. P. 141; Horsley v. Rush (1788), cited 7 T. R. p. 209; Berkeley v. Hardy (1826), 5 B. & C. 355.

(g) Coles v. Trecothick (1804), 9 Ves. p. 250; Clinan v. Cooke (1802), 1 Sch. & Lef. 22, 31; Heard v. Pilley (1869), 4 Ch. 548.

(h) Mortal v. Lyons (1858), 8 Ir. Ch. R. 112, 117.

(i) Collen v. Gardner (1856), 21 Beav. 540; Ridgway v. Wharton (1854), 3 D. M. & G. 677, 688.

lease according to the nature and locality of the property (k). farm bailiff accustomed to let from year to year upon certain ordinary terms, and to receive rents, has no implied authority to let upon unusual terms unknown to the owner (l). But the owner, either expressly in writing (m) or by acts indicating his assent, may ratify his steward or bailiff's contract (n).

A mere authority to an agent to procure a tenant for premises Authority of at a specified rent, without any instructions as to the provisions to be inserted in the lease or agreement, does not give the agent implied authority to conclude a contract for letting the premises. His duty is to find a tenant and communicate his offer to the principal (o). Under such circumstances the agent has no implied authority to let a person into possession of the premises (p).

A house agent (q), employed to find a tenant for a house, and Duty of agent. receiving a commission (r), must exercise reasonable care and diligence in ascertaining the condition of a person before he introduces him to the landlord as a tenant (s); for when the owner of a house proposes to a house agent that he should find a tenant for him, it is meant that he should find a fit and proper tenant(s).

The agent should sign any lease or agreement in the name of Execution by the principal—"A. B. by C. D. his agent" (t), or "as agent and agent. on behalf of A. B. "(u). No particular form of words is required

- (k) Peers v. Sneyd (1853), 17 Beav. 157. And he may, in the absence of any limitation on his powers, authonze the tenant to change agricultural land to market gardens: Re Pearson and l'Anson (1899), 69 L. J. Q. B. 878. (1) Turner v. Hutchinson (1860), 2 F. & F. 185.
- (m) Fitzmaurice v. Bayley (1860), 6 E & B. 868; 8 ib. 664; 9 H. L. C.
- (n) See Rodmel v. Eden (1859), 1 F.& F. 542; Powell v. Smith (1872), L. R. 14 Eq. 85. (In this case the owner had let the tenant into possession of a farm under an agreement for a lease entered into by the agent.)

(e) Wilde v. Watson (1878), 1 L. R. Ir. 402, 405. See Hamer v. Sharp (1874), L. R. 19 Eq. 108.

(p) See Slack v. Crewe (1860), 2 F. & F. 59.

(q) Every person who exercises the business of a house agent must take out a yearly licence of 2l. (24 & 25 Vict. c. 21). See the definition of house agent in sect. 10.

- (r) As to the circumstances under which a house agent may claim a commission payable on a letting "through his intervention," Mansell v. Clements (1874), L. R. 9 C. P. 139. An agent earns his commission if he is employed to lease and gives an introduction which results in a lease, although he does not carry through the whole adjusting of the terms: Toulmin v. Millar (1887), 58 L. T. 96. See Curtis v. Nixon (1871), 24 I. T. 706; Lofts v. Bourke (1884), 1 T. L. R. 58; Debenham v. Chambers (1895), 12 T. L. R. 24; Rimmer v. Knowles (1874), 22 W. R. 574.
- (s) Heys v. Tindall (1861), 1 B. & S. 296, 298.
- (t) Combe's Case (1614), 9 Rep. p. 76 b; White v. Cuyler (1795), 6 T. R. 176.
- (u) Green v. Kopke (1856), 18 C. B. 549.

to be used, provided the act be done in the name of the principal -e.g., it will suffice if opposite to the seal be written the words "for A. B. [principal], C. D. [agent]" (x). But the donee of a power of attorney may execute any instrument in his own name and with his own seal (y).

Liability of agent.

If the agent signs the lease or agreement in his own name he will $prim\hat{a}$ facie be deemed to contract personally; and in order to discharge him from this liability it must appear from the lease or agreement that he did not intend to bind himself as principal (z). If in the body of the lease or agreement it appears that the agent was to be responsible for the fulfilment of the contract, the fact that he expressly makes it "for and on behalf of" or "as agent for" another will not discharge him from personal liability (a).

XI. RECEIVERS, &c.

Receivers.

Under the old practice a receiver appointed by the Court had no power of letting even for a single year (b) without obtaining the sanction of the Court (c). Under the present practice he may let at his discretion for a year certain or less, or for any time not exceeding three years, without applying for the sanction of the Judge (d); and since in any case he can only grant such parol lease as can be granted under sect. 2 of the Statute of Frauds (e), the same limit applies even when he obtains the sanction of the Court. He has no power to transfer the legal estate, nor can such power be given him by the Judge (f), and if the Court sanctions a longer lease steps must be taken to procure its execution by the legal owner; but a lease by the receiver is good by estoppel as between himself and the lessee (g).

(x) Wilks v. Back (1802), 2 East, p. 145.

(b) Wynne v. Lord Newborough

(1790), 1 Ves. 164.

(d) Seton on Decrees, 6th ed. Vol. I. p. 802.

(e) 29 Car. 2, c. 2; infra, p. 124. (f) Kerr on Receivers, 4th ed. 188; Gibbins v. Howell (1818), 3 Madd. 469; Evans v. Matthias (1857), 7 E. & B. 590; see p. 601.

(g) Evans v. Matthias. See infra,

p. 74.

⁽y) Conveyancing Act, 1881, s. 46. See Lawrie v. Lees (1881), 7 App. Cas. 19.

⁽z) Notes to Thomson v. Davenport (1829), 9 B. & C. 78; 2 Sm. L. C. 11th ed. p. 379.

⁽a) Norton v. Herron (1825), 1 C. & P. 648; Tanner v. Christian (1855), 4 E. & B. 591. As to the liability of a person who contracts as agent without authority, see Collen v. Wright (1857), 8 E. & B. 647.

⁽c) Morris v. Elme (1790), 1 Ves. 139. As to the liability of a receiver for rent, see Justice v. James (1899), 15 T. L. R. 181.

The Bankruptcy Act, 1883 (h), and the Companies Acts, 1862 to 1900 (i), do not specifically confer upon trustees in bankruptcy or liquidators a power of leasing, such power being in general unnecessary for the winding up of the estate; but a lease of a company's property can be made with the sanction of the Court (k).

in bankruptcy and liquidators.

(3) RESTRICTIONS ARISING FROM CONFIDENTIAL RELATIONS.

There are certain classes of persons, standing in confidential relations to the owners of property, who possess peculiar opportunities of obtaining a knowledge of the value of the property with which they are concerned, and peculiar means of influencing the minds of the persons for whom they act. Courts of Equity look with a jealous eye on the transactions of individuals occupying this position, and leases granted by principals to agents (l), by clients to solicitors, by wards to guardians, by cestuis que trust to trustees, or by mortgagers to mortgagees (m), will be set aside if the considerations given for the leases are grossly inadequate (n), or if any advantage appears to have been taken of the confidential relation in which the parties stand (o).

If a trustee takes a renewal of a lease in his own name, this, so Renewals to iar as it is beneficial, operates in favour of the cestui que trust, even though the lessor refused to renew for his benefit (p), and where a trustee of a bankrupt takes a lease to himself, he is answerable for profit and must bear any loss (q). So, again, if a

(h) See sects. 44, 54, 56.

(i) See Act of 1862, ss. 95, 133; Comp. (Winding-up) Act, 1890, s. 12.

(k) See Palmer's Comp. Prec., Part II. 8th ed. p. 353. Inasmuch as the property of the company does not vest in the liquidator, the lease should be in the name, and under the seal, of the company: Companies Act, 1862 (25 & 26 Vict. c. 89), s. 95. Cf. Re Dynevor, &c., Collieries Co. (1879), 11 Ch. D. 605, where the Court sanctioned a scheme of arrangement which included the granting of a lease by the company's voluntary liquidators, who were also the trustees for its debenture-holders.

(1) Moloney v. Kernan (1842), 2 Dr. & War. 31.

(m) Webb v. Rorke (1806), 2 Sch. Lef. 661; Hicks v. Cooke (1816), 4 Dow. 16. The doctrine as regards mortgagors depended to some extent on the usury laws, but also on the circumstance that the lease incumbered the equity of redemption (per Lord Redesdale in Hicks v. Cooke, loc. cit. p. 26). At the present day it must be received with caution.

(n) Ward v. Hartpole (1776), 3 Bligh, 470; Dawson v. Massey (1809), 1 Ball & B. 219.

(o) Aylward v. Kearney (1814), 2 Ball & B. 463. See the notes to Huguenin v. Baseley (1807), 1 Wh. & T. L. C. 7th ed. 247; and cf. Grosvenor v. Skerratt (1860), 28 Beav. 659.

(p) Keech v. Sandford (1726), Sel. Cas. in Ch. 61; Ex parte James (1803), 8 Ves. p. 345.

(q) Ex parte Hughes (1802), 6 Ves. 617.

person, jointly interested with an infant in a lease, obtains a renewal to himself only, and the lease proves beneficial, he may be held to have acted as trustee, and the infant may claim his share of the benefit; while, if the lease does not prove beneficial, the lessee may have to take it upon himself (r). But a person renewing is a constructive trustee of the new lease only where, in respect of the old lease, he occupied some position by virtue of which he owed a duty towards other persons interested in that lease (s).

Leases by intoxicated persons.

Leases made by persons in a state of intoxication when they have been drawn into intoxication by contrivance, or any unfair advantage has been taken of their situation, will be set aside (t). In general the contract of a man so intoxicated as to be deprived of his reason is not void but voidable, and it can be confirmed when he becomes sober (u).

Duress.

A lease made under duress is void (x).

(4) LEASES BY ESTOPPEL.

Leases by estoppel.

When a person who has no estate in the land purports to grant a lease thereof, and the lessee enters, the relation of land-lord and tenant is created, and as between the parties the lesse is treated as a valid subsisting lease. This is upon the principle of estoppel, the lessor and the lessee being reciprocally estopped from disputing the title of the lessor to grant the lease.

The estoppel seems to have been first recognized in the case of a lease by indenture (y), and was simply a case of estoppel by deed. It had the consequence that if the lessor subsequently acquired the legal estate in the land, the estate of the lessee by estoppel became an estate in interest. The estate of the lessor was said to feed the estoppel, and the lease was deemed to be well granted out of the legal estate (z). Previously to such acquisition of estate by the lessor, he has a reversion by estoppel, which $prim\hat{a}$ facie is a reversion in fee (a).

(r) Ex parte Grace (1799), 1 B. & P. 376. This case seems to be somewhat loosely reported. See Re Biss, Biss v. Biss, [1903] 2 Ch. 40, at p. 59.

(s) Re Biss, supra, at p. 61. (t) Cooke v. Clayworth (1811), 18 Ves. 12; Say v. Barwick (1812), 1 V. & B. 195. See Butler v. Mulvihill (1819), 1 Bligh, 137, note at p. 160.

(u) Matthews v. Baxter (1873), L. R. 8 Ex. 132; Cooke v. Clayworth, supra. See Pitt v. Smith (1811), 3 Camp. 33.

(x) Bac. Abr. "Duress" (C.) 774. (y) Bac. Abr. (O.) 850; Co. Litt. 47b; Smith v. Low (1739), 1 Atk. 489.

(z) Doe v. Oliver (1830), 2 Sm. L. C. 11th ed. 724; Webb v. Austin (1844), 7 M. & Gr. 701.

(a) Sturgeon v. Wingfield (1846), 15 M. & W. 224; Cuthbertson v. Irving (1860), 6 H. & N. 135.

tenancy.

But the principle is not confined to leases by indenture. A Estoppel by tenant, whatever be the nature of his tenancy (b), cannot, while he retains possession, dispute his landlord's title (c), or put in any plea which brings it into question (d), even though the defect in the title appears on the face of the lease (e), or though the tenant is prepared to show that the landlord obtained control of the land by fraud (f). This rule has been referred to as "the common law principle that one who derives possession of land under another shall not be permitted to question his right to give him possession" (g), and it extends to all cases where possession has been obtained by permission, as by a licensee, a lodger, or a servant (h). Where possession has been received from an agent for an undisclosed principal, the estoppel applies in favour of the principal (i). And since estoppels are in their nature mutual (k), the landlord is equally estopped from denying to the tenant any rights incident to the tenancy which he has purported to create (l). From the same principle of the mutuality of estoppels it follows that, if the lessor is by reason of disability—e.g., infancy—not liable to be estopped, so neither is the lessee (m).

The estoppel is not confined to ejectment, but can be set up in The estoppel all actions between the parties arising upon the tenancy, as in an action for rent (n), on a covenant in the lease (o), or in as between trespass (p); nor can the tenant obtain even equitable relief upon an allegation which brings the landlord's title into dispute (q). It holds in favour of persons deriving title under the

prevails in all actions, and

assigns of

original parties.

(b) See per Cresswell, J., in Doe v. Foster (1846), 3 C. B. p. 229.

(c) Doe v. Smythe (1815), 4 M. & S. 347; Att.-Gen. v. Hothum (1823), T. & R. p. 219; Doe v. Fuller (1835), Tyr. & G. 17; Phipps v. Sculthorpe (1817), 1 B. & A. 50; Agar v. Young (1841), Car. & M. 78; Cook v. Whellock (1890), 24 Q. B. D. 658. See notes to Veale v. Warner, 1 Wms. Saund. 580, and to Walton v. Waterhouse, 2 Wms. Saund. 826.

(d) Palmer v. Ekins (1725), 2 Ld. Kaym. 1550.

(e) Duke v. Ashby (1862), 7 H. & N. 600; Jolly v. Arbuthnot (1859), 4 De G. & J. 224; Morton v. Woods (1869), L.R.4Q.B.293. Apparently Pargeter V. Harris (1845), 7 Q. B. 708, so far as

it decided the contrary, is overruled. (f) Parry v. House (1817), Holt, N. P. 489.

(g) Per Cockburn, C.J., in Delaney v. Fox (1857), 2 C. B. N. S. p. 774.

(h) See per Patteson, J., in Doc v. Baytup (1835), 3 A. & E. p. 192.

(i) Fleming v. Gooding (1834), 10 Bing. 549.

(k) Co. Litt. 352 a.

(l) Cf. Weller v. Spiers (1872), 20 W. R. 772.

(m) Bac. Abr. (O.) 852; Smith v. Low (1739), 1 Atk. 489.

(n) Parker v. Manning (1798), 7T. R. 537. As to replevin, see Sullivan v. Stradling (1764), 2 Wils. 208.

(o) Cuthbertson ∇ . Irving (1860), 6 H. & N. 135.

(p) Delaney v. Fox (1857), 2 C. B. N. S. 768.

(q) Homan v. Moore (1817), 4 Price, 5.

lessor (r), and, in general, upon a lease by a tenant for life, the estoppel can be set up by the remainderman, for the title is the same (s). It holds also in favour of under-lessees, against a mortgagee, not really bound by the under-lease, who has represented to them, and induced them to act on the belief, that he is the reversioner expectant on the under-lease, and against persons claiming through that mortgagee (t). So, too, the estoppel binds persons claiming under the lessee (u), including under-tenants (x), or in any way obtaining possession by consent of the lessee, as where a person setting up an adverse title pays the lessee money to get into possession (y); save under special circumstances, as where the lessor's title is derived under the person so getting into possession (z). An estoppel binding a partnership is binding on each partner (a). But the estoppel does not bind a third person, not claiming possession of the land under the tenant. Hence such third person, who has brought his goods on the land by the tenant's licence, can dispute the landlord's title to distrain (b).

Duration of estoppel.

The estoppel is said to last only during the continuance of the lease, "for by the making of the lease the estoppel doth grow, and consequently by the end of the lease the estoppel determines" (c). But clearly the lessee is estopped until he has given up possession (d), unless, apparently, he is himself entitled and took the lease under a mistake (e).

No estoppel where interest passes.

But there is no estoppel where an interest, which has since determined, passed by the lease, and consequently, if the lessor had an estate, but an insufficient one, he is not estopped from avoiding the lease when that estate comes to an end. Thus if

- (r) Trevivan v. Lawrance (1705), 1 Salk. 276; Palmer v. Ekins (1725), 2 Ld. Raym. 1550; Parker v. Manning, supra; Cuthbertson v. Irving, supra; Ward v. Ryan (1875), Ir. R. 10 U. L. 17.
- (s) Doe v. Whitroe (1822), Dowl. & Ry. N. P. 1. Cf. Doe v. Langdon (1848), 12 Q. B. 711.
- (t) Keith v. R. Gancia & Co., [1904] 1 Ch. 774.
- (u) Doe v. Smythe (1815), 4 M. & S. 347; Taylor v. Needham (1810), 2 Taunt. 278.
- (x) L. & N. W. Ry. Co. v. West (1867), L. R. 2 C. P. 553; Doe v. Beckett (1843), 4 Q. B. p. 606; Barwick v. Thompson (1798), 7 T. R. 488.

- (y) Doe v. Mills (1834), 2 A. & E.
- (z) Ford v. Ager (1863), 2 H. & C. 279.
- (a) Francis v. Doe (1838), 4 M. & W. 331.
- (b) Tadman v. Henman, [1893] 2 Q. B. 168.
- (c) Co. Litt. 47 b; James v. Landon (1582), Cro. Eliz. 36.
- (d) Doe v. Austin (1832), 2 Moo. & Sc. 107; 9 Bing. 41.
- (e) Per Blackburn, J., in Clark v. Adie (1877), 2 App. Cas. p. 435; Eliot v. Mayor of Bristol (1895), 71 L. T. 659; Accidental Death Insurance Co. v. Mackenzie (1861), 5 L. T. 20.

tenant pur autre vie leases for years and purchases the reversion, and the life falls during the lease, he is not bound to make good the lease out of the reversion; and so if one who has a lease for ten years grants a lease for twenty years (f). In the latter case, indeed, the lease operates as an assignment, and the relation of landlord and tenant is not created (g).

In the same manner (h) the lessee, though he is estopped from alleging that the lessor had no title at all at the date of the lease, is at liberty to show that a title which he then had has since expired (i). But where a lessor was only entitled as coparcener to a share in the demised land, it was held that, notwithstanding this rule, the lessee was estopped as against the heir from denying his title to the whole (k). Where a new tenancy is created without any fresh letting into possession, the new tenancy creates no absolute estoppel as to the then title of the lessor, and, upon the principle to be mentioned presently (l), the tenant may show that he took the fresh tenancy under a mistake as to the landlord's title (m).

Where a person in possession of land recognizes a subsisting Estoppel by tenancy under another, whether by payment of rent, by submission to distress (n), or otherwise, he is similarly estopped from disputing the title of that other, although he did not originally receive possession from him (o); and if the recognition has taken place upon a change of landlords at the request of the former landlord (p), such former landlord is estopped from alleging the tenancy under himself to be subsisting (q).

Tenant may show landlord's title has expired.

payment of rent, &c.

- (f) Co. Litt. 47 b; Bac. Abr. (O.) 853; Treport's Case (1594), 6 Rep. 14 b. See per Parke, B., in Doe v. Seaton (1835), 2 Cr. M. & R. p. 730. (g) Langford v. Selmes (1857), 3 K. & J. 220.
- (h) Blake v. Foster (1800), 8 T. R. 487; Hill v. Saunders (1825), 4 B. & C. 529; Doe v. Seaton (1835), 2 Cr. M. & R. 728.
- (i) Brudnell v. Roberts (1762), 2 Wils. 143; England v. Slade (1792), 4 T. R. 682; Doe v. Watson (1817), 2 Stark. 230; Neave v. Moss (1823), 1 Bing. 360; Doe v. Ramsbotham (1815), 3 M. & S. 516; Hopcraft v. Keys (1833), 9 Bing. 613; Pope v. Biggs (1829), 9 B. & C. p. 251; Doe v. Edwards (1834), 5 B. & Ad. 1065; Mountnoy v. Collier (1853), 1 E. & B.
- 630. Cf. Weld v. Baxter (1856), 11 Ex. 816. See Knight v. Hickman (1885), 29 Sol. Journ. 386 (Salisbury) County Court).
- (k) Weeks v. Birch (1893), 69 L. T. **759.**
 - (l) Infra, p. 78.
- (m) Claridge v. Mackenzie (1842), 4 M. & Gr. 143.
- (n) Panton v. Jones (1813), 3 Camp. 372; Cooper v. Blandy (1834), 1 Bing. N. C. 45. See Jump v. Payne (1899), 68 L. J. Q. B. 607.
- (o) See Cooke v. Loxley (1792), 5. T. R. 4.
- (p) See Hall v. Butler (1839), 10 A. & E. 204.
- (q) Downs v. Cooper (1841), 2 Q.B. 256.

Exceptions.

But the rule of estoppel in favour of a landlord from whom the tenant did not originally receive possession is not absolute; the tenant may dispute the landlord's title if he can show that he was induced to pay rent by fraud or misrepresentation (r); and he may give evidence that the person to whom rent was paid received it as agent for a third person (s). Moreover, provided he can show that another person is entitled to receive the rent (t), he is permitted to show that the person whom he has recognized as landlord is not really entitled, and that the recognition took place under mistake (u). And, upon the principle already mentioned, the tenant may show that the title of the person whom he has recognized as landlord has since such recognition come to an end (x).

SECT. III.—AN ACTUAL LETTING, OR AN AGREEMENT CAPABLE OF SPECIFIC ENFORCEMENT.

When instruments are construed as mere agreements.

Subject to what will presently be said as to the effect of some agreements to let since the Judicature Acts, a mere agreement, without any words of present demise, will not constitute the relation of landlord and tenant between the parties (y). In order to constitute such relation there must be an intention on the part of the one party to let, and of the other to hold as tenant. Mere occupation of premises by one of several tenants in common will not create a tenancy between him and the other tenants in common (z), nor will the occupation for partnership purposes of premises of one partner create a tenancy between that partner and the firm, even though by the partnership articles an annual sum is made payable as rent (a). And

- (r) Doe v. Wiggins (1843), 4 Q. B. 367; Williams v. Bartholomew (1798), 1 B. & P. 326; Doe v. Brown (1837), 7 A. & E. 447; Carlton v. Bowcock (1884), 59 L. T. 659.
- (s) Jones v. Stone, [1894] A. C. 122. (t) Cooper v. Blandy (1834), 1 Bing. N. C. 645; Knight v. Cox (1856), 18 C. B. 645.
- (u) Rogers v. Pitcher (1815), 6 Taunt. 202; Gravenor v. Woodhouse (1822), 1 Bing. 38; Cornish v. Sewell (1828), 8 B. & C. 471; Fenner v. Duplock (1824), 2 Bing. 10; Doe v. Francis (1837), 2 Moo. & R. 57; (iregory v. Doidge (1826), 3 Bing. 474; Jew v. Wood (1841), 1 Cr. &
- Ph. 185; Carlton v. Bowcock (1884), 51 L. T. 659.
- (x) Brook v. Biggs (1836), 2 Bing. N. C. 572.
- (y) Clayton v. Burtenshaw (1826), 5 B. & C. 41; Phillips v. Hartley (1827), 3 C. & P. 121. See Taylor v. Jackson (1846), 2 C. & K. 22.
- (z) See cases cited in Bailey v. Hobson (1869), 39 L. J. Ch. 270.
- (a) Ex parte Appleby (1872), 20 W. R. 411. An agreement for letting for a term on condition of rent being duly paid is not merely personal, and it passes an estate. See Duxbury v. Sandiford (1899), 80 L. T. 552.

although words of present demise are made use of, yet if upon the whole instrument (b), and having regard to the nature of the subject-matter (c), it does not appear to have been intended by the parties to operate as a lease, but only as preparatory and relative to a future lease to be made, the law will rather do violence to the words than break through the intent of the parties (d).

Thus, if there are matters to be ascertained without which Instances of the terms of holding will not be perfectly complete (e); or if the instrument contains a stipulation that "a clause is to be added in the lease" for a particular purpose (f), or a proviso that the instrument shall not be construed or taken to operate as a lease or actual demise (g); or if the lease is to take effect only on the performance or happening of a condition (h); or if there is a want of certainty as to the time of commencement of the term and of the rent becoming due (i), or as to the amount of rent (k); or if strong circumstances of inconvenience are apparent on the instrument, if it should be construed as a lease (l); or if it appears by the instrument that the lessor has no present power to grant a lease (m); the instrument will be construed as a mere agreement for a lease, although it may contain words of present demise.

Instruments not under seal can now operate as leases only when instruwhen the terms of years to which they relate will end within

construed as

leases.

agreements.

(b) See per Alderson, B., in Gore v. Lloyd (1844), 13 L. J. Ex. at p. 372.

(c) Doe v. Clare (1788), 2 T. R. 739, 744; Fenny v. Child (1814), 2 M. & S. 255, 257; Doe v. Powell (1844), 8 Sc. N. R. 687, 7 M. & Gr.

(d) Bac. Abr. (K.) 817; Doe v. Ashburner (1793), 5 T. R. 163. Morgan v. Bissell (1810), 3 Taunt. 65; Browne v. Warner (1807), 14 Ves. 156; Doe v. Smith (1805), 6 East, 530; Tempest v. Rawling (1810), 13 East, 18; Rawson v. Eicke (1837), 1 A. & E. 451; Brashier v. Jackson (1840), 6 M. & W. 549; Chapman v. Towner (1840), 6 M. & W. 100; licknell v. Hood (1839), 5 M. & W. 104.

(e) John v. Jenkins (1832), 1 Cr. & M. 227; Jones v. Reynolds (1841), 1 4 B. 506.

(f) Doe v. Smith (1805), 6 East, **530.**

(g) Perring v. Brook (1835), 7 C. & P. 360.

(h) Doe v. Clarke (1845), 7 Q. B. 211.

(i) Dunk v. Hunter (1822), 5 B. & A. 322, 325. See Clayton v. Burtenshaw (1826), 5 B. & C. 41.

(k) As where the rent is to be fixed by valuation, and no valuation is made: John v. Jenkins (1832), 1 Cr. & M. 227. But see M'Creesh v. M'Geough (1873), Ir. R. 7 C. L. 236.

(l) Morgan v. Bissell (1810), 3 Taunt. 65; Doe v. Powell (1844), 8 Sc. N. R. 687, 700, 7 M. & Gr. 980. See Hayward v. Haswell (1837), 6 A. & E. 265.

(m) Hayward v. Haswell, 6 A. & E. 265. Cf. Doe v. Foster (1846), 3 C. B. 215.

three years from the making of the instrument, and when the rent reserved during such term amounts to two-third parts at the least of the full improved value of the premises (n). Subject to this restriction, an instrument, although it may be designated an agreement, and may contain a stipulation for the execution of a future lease (o), will nevertheless be held to operate as a lease if it contains words of present demise, such as "I demise," "doth set and let," "doth agree to let" (p), "shall enjoy" (q), &c., uncontrolled by expressions of a contrary import, a specific rent being reserved, and the time at which the tenancy is to commence being clearly ascertained (r). And though there are no words of present demise, yet an instrument may operate as a lease, if it contains all the terms necessary for a lease, and if it appears that such was the intention of the parties (s). Thus an instrument under seal containing a covenant to grant a lease has been construed as a lease, the reservation of rent and other terms pointing to a present demise (t); and an agreement for a future lease, under which a person has entered into possession, not containing any words of present demise, but providing that in the meantime, until the lease shall be executed, the intended lessee shall pay the rent and perform the covenants, with a power of distress for non-payment of rent, will, it seems, have the same effect (u).

Building agreement.

But a building agreement containing similar provisions, under which the builder is only to be entitled to leases after the erection of buildings, does not operate as a present demise (r); the builder is at most tenant at will (v); though when his right

(n) See infra, p. 124.

(1846), 15 M. & W. 601; Furness v. Bond (1888), 4 T. L. R. 457.

(q) Doe v. Ashburner (1793), 5 T. R. 163.

(r) See note (o), supra.

(s) Wright v. Trezevant (1828), 1 Moo. & M. 231. See Rollason v. Leon (1861), 7 H. & N. 73.

(t) Curling v. Mills (1843), 6 M. & Gr. 173.

- (u) Hancock v. Caffyn (1832), 8 Bing. 358, 365. See Pinero v. Judson (1829), 6 Bing. 206; Anderson v. Midland Ry. Co. (1861), 3 E. & E. 614. But see Doe v. Foster (1846), 3 C. B. 215.
- (v) Camden v. Batterbury (1859), 5 C. B. N. S. 808. It is usual to insert a provision expressly excluding a

⁽o) Harrington v. Wise (1595), Cro. Eliz. 486; Baxter v. Browne (1775), 2 W. Bl. 973; Barry v. Nugent (1782), 3 Doug. 179; Poole v. Bentley (1810). 12 East, 168; Warman v. Faithfull (1834), 5 B. & Ad. 1042; Doe v. Benjamin (1839), 9 A. & E. 644, 651; Hancock v. Caffyn (1832), 8 Bing. 358, 368; Doe v. Ries (1832), 8 Bing. 178; Pearce v. Cheslyn (1835), 4 A. & E. 225; Alderman v. Neate (1839), 4 M. & W. 704; Wilson v. Chisholm (1831), 4 C. & P. 474; Chapman v. Bluck (1838), 4 Bing. N. C. 187.

⁽p) Staniforth v. Fox (1831), 7 Bing. 590; Doe v. Benjamin, supra; Doe v. Ries, supra; Tarte v. Darby

to the lease is complete he holds upon the agreed terms of the lease (x).

The usual clause in agreements for building leases, providing Materials that materials brought on to the ground are to be considered the ground. the property of the landowner, operates to vest the property in the materials in the landowner, subject to a condition of defeasance if the builder completes the agreed buildings. put in as a security for the performance of the agreement; and if the builder makes default in performance, he cannot remove the materials (y).

Entry under an agreement for a lease, coupled with payment Possession of rent, creates at common law a tenancy from year to year on the terms of the agreement so far as they are applicable (z). for a lease. Where, however, possession has been given and taken under such an agreement, and it is one which the Court could and would, at the instance of either party, order to be specifically performed, there are not now, i.e. since the Judicature Acts, as there were formerly, two estates, one at common law by reason of the payment of the rent and another in equity under the , agreement, but the tenant holds under the same terms, and has! the same rights and liabilities, as if a lease had been granted; so that, for instance, he cannot be turned out, like a tenant from year to year, by six months' notice, and, on the other hand, he is liable to distress. This was decided by the Court of Appeal in Walsh v. Lonsdale (a).

agreement.

But, in applying that decision, care must be taken to avoid Walsh v. the error of supposing that it takes away all difference between the legal and equitable estates. It does nothing of the sort, and the limits of its applicability are really rather narrow. applies only to cases where there is a contract to transfer a legal title, and an act has to be justified, or an action maintained, by

Lonsdale (b).

present or actual demise; see Holland v. Kensington Vestry (1867), L. R. 2 C. P. 565; Driscoll v. Batter-Borough Council, [1903] 1 K. B. 881, 887. As to liability for the sums reserved pending the lease, 800 Adams v. Hagger (1879), 4 Q. B. D. 480; Howlett v. Tarte (1861), 10 C. B. N. S. 813.

Lowther v. Heaver (1889), 41 Ch. D. 248.

(y) Hart v. Porthgain Harbour Co., [1903] 1 Ch. 690, 694, 696.

(z) Infra, p. 94.

(a) (1882) 21 Ch. D. 9, 14, 15; approved by Cotton, L.J., in Lowther v. Heaver (1889), 41 Ch. D. 248, 264, and explained by Lord Esher in Swain v. Ayres (1888), 21 Q. B. D. 289, 292, and in Foster v. Reeves, [1892] 2 Q. B. 255. See, too, Crump v. Temple (1890), 7 T. L. R. 120; Allhusen v. Brooking (1884), 26 Ch. D. 559; Re Maughan (1885), 14 Q. B. D. 956.

(b) (1882), 21 Ch. D. 9.

force of the legal title to which the contract relates. It involves two questions, viz., (i) Is there a contract of which specific performance can be obtained? and (ii) if yes, will the title acquired by such specific performance justify at law the act complained of, or support at law the action in question? It is to be treated as though, before the Judicature Acts, there had been first a suit in equity for specific performance, and then an action at law between the same parties; and the doctrine is applicable only in those cases where specific performance is obtainable between the same parties, in the same Court, and at the same time as the subsequent legal question falls to be determined. Thus, in Walsh v. Lonsdale (c) the landlord under an agreement for a lease for a term of seven years distrained. Distress is a legal remedy, and depends on the existence at law of the relation of landlord and tenant; but the agreement between the same parties, if specifically enforced, created that relation. It was clear that such an agreement would be enforced in the same Court and between the same parties; the act of distress was, therefore, held to be lawful (d). And so where, by an agreement for a yearly tenancy of an hotel, executed under seal by the tenant, he covenanted with the landlords to purchase all his beer from them and their successors in business, and he for several years occupied and paid rent for the hotel under that agreement, it was held that the landlords' assigns were clearly entitled, as against the tenant, to specific performance of the agreement, and that accordingly they could sue him for breach of the above covenant, although the landlords had never executed the agreement (e). But it follows from what has already been said that the principle of the decision in Walsh v. Lonsdale (c) cannot be applied unless the Court before which the question arises has equitable jurisdiction to enforce the agreement specifically, as well as jurisdiction in law. Hence, if, for instance, the value of the property exceeds 500l., an agreement for a lease cannot be treated as a lease in proceedings in a county court (f). Again, if, as the result of an action for specific performance against a tenant who has gone into possession under an agreement, it is ordered that possession shall

⁽c) (1882), 21 Ch. D. 9. (d) Per Farwell, J., in Manchester Brewery Co. v. Coombs, [1901] 2 Ch. 608, at pp. 617, 618.

⁽e) Manchester Brewery Co. v. Coombs, supra.

⁽f) Foster v. Reeves, [1892] 2 Q. B. 255.

be given up to the lessor, and possession is so given up, the relation of landlord and tenant is at an end, and the lessor cannot, on the principle of Walsh v. Lonsdale (g), distrain for arrears of rent upon chattels remaining on the premises (h).

An attornment is an admission by the person making it that Attornment. he holds the premises as tenant under the person to whom it is made, and thereby the relation of landlord and tenant is created (i). Attornment is evidence of the title of the landlord (j), and unless it can be shown to have been made under a mistake, or to have been obtained by fraud or misrepresentation (k), it operates against the tenant as an estoppel.

An attornment in writing which is simply an attornment—that Stamp on is, where the tenant puts one person in the place of another as his landlord and holds on the same terms as before—does not require a stamp (l); but it is otherwise where the attornment is evidenced by a document which operates as a fresh contract (m).

Formerly an attornment clause was inserted in mortgages in Attornment cases where the mortgagor was himself in occupation of the mortgage mortgaged premises, with a view to creating the relation of land- deeds. lord and tenant between mortgagee and mortgagor, and vesting in the mortgagee, either expressly or impliedly, the power of distress which is incident to that relation (n); and although, as will presently appear, an attornment clause is not now effectual for this purpose, it is still constantly used to enable the mortgagee to get speedy possession.

Ordinarily an attornment at a yearly rent creates a tenancy Nature of from year to year, even though the mortgagee retains the right tenancy. of re-entry (o); but the nature of the tenancy depends on the

attornment.

(g) (1882), 31 Ch. D. 9.

(h) Murgatroyd v. Old Silkstone, de., Coal Co., [1895] 44 W. R. 198.

(i) See Cooper v. Lands (1866), 14 L.T. 287. As to the former necessity of attornment upon the grant of the reversion, see infra, Chap. v., Sect. i. (ŏ).

(j) Doe v. Edwards (1836), 5 A. & E. 95.

(k) Doe v. Brown (1837), 7 A. & E. 417. See Cornish v. Searell (1828), 8 B. & C. 471.

 \nearrow (!) Doe v. Edwards, supra; Doe v. /Smith (1838), 8 A. & E. 255; Barry v. Goodman (1837), 2 M. & W. 768. (m) Cornish v. Seurell (1828), 8 B.

& C. 471; Due v. Frankis (1840), 11 A. & E. 792.

(n) See Morton v. Woods (1869), L. R. 4 Q. B. 293; Re Stockton Iron Furnace Co. (1879), 10 Ch. D. 335; and cf. Walker v. Giles (1848), 6 C.B.

662; 11 Geo. 2, c. 19, s. 11. (o) Re Threlfall (1880), 16 Ch. D. 274, explaining Morton v. Woods, supra; Ex parte Voisey (1882), 21 Ch. D. 442. As to right to re-enter notwithstanding the tenancy, see Doe v. Olley (1840), 12 A. & E. 481; Doe v. Tom (1843), 4 Q. B. 615; Doe v. Goodier (1847), 10 Q. B. 957; Met. Counties Assurance Co. v. Brown (1859), 4 H. & N. 428.

agreement between the parties, and it may be a tenancy at will even though a yearly rent is reserved (p), or a term specified (q). If it is a tenancy at will it is determined by an assignment of the mortgage (r), or by the death of the mortgagor (s); and payment of interest on the mortgage by the heir does not renew the tenancy at will (t). To create the tenancy, it is not necessary for the mortgage deed to be executed by the mortgagee; it is sufficient if the mortgagor occupies under it (u).

Effect of attornment clause.

The tenancy created by attornment carries with it at common law a power of distress against the goods of the mortgagor (x), and against such goods when vested in his trustee in bankruptcy (y); and also against the goods of strangers (z). But by reason of the provisions of the Bills of Sale Acts, 1878 and 1882, an attornment clause in a mortgage deed not registered as a bill of sale does not operate to create a power of distress, sect. 6 of the Act of 1878 enacting that attornments giving, or agreeing to give, a power of distress by way of security for money lent are to be deemed to be bills of sale of any personal chattels seizable under such power (a). This enactment is immediately followed by a proviso presumably intended to qualify it, but which, as construed by the Court of Appeal, amounts to little, if anything, more than a recognition of the existence of the usual right of distress in cases where a mortgagee, having first taken possession of the mortgaged premises, then demises them to the mortgagor, as his tenant, at a fair rent (b). Where a mortgage deed contains an attornment clause, that clause itself is not such a taking possession by the mortgagee as is contemplated by the foregoing proviso (c). However, for purposes other than the creation of a power of distress an attornment clause is effectual, and, in

⁽p) Pinhorn v. Souster (1853), 8 Ex. 763; Turner v. Barnes (1862), 2 B. & S. 435; Doe v. Davies (1851), 7 Ex. 89.

⁽q) Morton v. Woods (1869), L. R. 4 Q. B. 293.

⁽r) Brown v. Metr. Counties, &c., Society (1859), 1 E. & E. 832.

⁽s) Turner v. Barnes, supra.

⁽t) Scobie v. Collins, [1895] 1 Q. B. 375.

⁽u) Morton v. Woods, supra; West v. Fritche (1848), 3 Ex. 216; Ex parte Voisey (1882), 21 Ch. D. 442.

⁽x) West v. Fritche, supra; Morton v. Woods, supra; Ex parte Voisey

^{(1882), 21} Ch. D. 442.

⁽y) Re Stockton Iron Furnace Co., supra.

⁽z) Pinhorn v. Souster, supra; Keursley v. Phillips (1883), 11 Q. B.D. 621.

⁽a) Whence it follows that they are void, as regards those chattels, unless duly registered under the Acts: Act of 1882, s. 8; and see per Kay, L.J., in *Green* v. *Marsh*, [1892] 2 Q. B. at p. 335.

⁽b) Re Willis (1888), 21 Q. B. D. 384.

⁽c) Green v. Marsh, [1892] 2 Q. B. 330, at p. 336.

particular, it enables the mortgagee to recover possession as landlord by a writ specially indorsed under R. S. C. Ord. 3, r. 6 (d).

SECT. IV.—EXCLUSIVE POSSESSION.

In order that an instrument may operate as a lease it must Lease or A right licence. confer the right to exclusive possession of the premises. of using the premises without exclusive possession will be construed as a licence (e), and not as a lease (f). An agreement to let "all the room and power" in a certain mill takes effect as a demise (q).

In deciding whether a transaction amounts to a letting or only to a licence (h), the question to be considered is whether, looking to the substance and context of the agreement, the owner intended to part with the possession of and control over the property, or whether the agreement is merely for the use of the property in a certain way and on certain terms while it remains in the possession and under the control of the owner (i). The Court Letting. will not look so much to the words as to the substance of the agreement (k); and although there are no express words giving a right to exclusive occupation, yet if the nature of the acts to be done by the grantee requires such a right (l), the agreement will be held to amount to a letting (m).

On the other hand, although the parties use words appropriate Licence. to a lease, yet if from the whole agreement it appears that the grantor is to retain possession of the property and merely to give

(9) Marshall v. Schofield (1882), 52 L. J. Q. B. 58.

1890), 25 (h) As to mining licences, see infra, p. 213.

(k) Smith v. St. Michael, Cambridge (1860), 3 E. & E. p. 390.

(1) See Crosby v. Wadsworth (1805), 6 East, 602; but cf. Mogg v. Yatton (1880), 29 W. R. 74.

(m) Roads v. Trumpington (1870), L. R. 6 Q. B. 56, 64. Considerable weight was attached in the judgments in this case to the circumstance that the agreement provided that the land was to be "entered upon" and "delivered up" by the grantee.

⁽d) Mumford v. Collier (1890), 25

⁽e) As to stamping a licence, see Conservators of R. Thames v. Comm. of In. Rev. (1886), 18 Q. B. D. 279; National Telephone Co. v. Comm. of In. Rev., [1899] 1 Q. B. 250; and unfru, p. 216.

⁽f) Taylor v. Caldwell (1863), 3 B. & S. p. 832; Hancock v. Austin (1863), 14 C. B. N. S. 634; L. & N. W. Ry. v. Buckmaster (1875), L. R. 10 Q. B. 70, 444. See Jones v. Reynolds (1836), 4 A. & E. 805; Municipal Freehold Land Co. v. Met., de. Joint Committee (1883), C. & E. 184; Rendell v. Roman (1893), 9 T. L. R. 192.

⁽i) Wells v. Kingston - upon - Hull (1875), L. R. 10 C. P. at p. 408. See Cory v. Bristow (1877), 2 App. Cas. at p. 276.

the grantee a concurrent right of user, the agreement will be held to amount to a licence only (n).

In Wilson v. Tavener (a) there was a written agreement, whereby A. agreed to permit B. to erect a hoarding for a bill-posting station on the forecourt of a house in Falcon Road, Battersea, and also to use the gable end of another house in the same road for the same purpose at a yearly rent, payable quarterly on the usual quarter-days. It was held that the agreement did not confer on B. any right to the exclusive possession of any property or building of A.'s; that therefore there was no lease, but merely a licence revocable by either party on reasonable notice; and that a quarter's notice, determining the agreement at the end of a year of its currency, was a reasonable and sufficient notice.

A licence is not exclusive unless it is either expressed to be so, or an intention that it should be so can be clearly inferred from the language of the agreement (p). But, while the licensor retains the right to grant fresh licences, he must not thereby defeat his own previous grant (q), or defeat the known objects of the first licensee in applying for his licence (r).

Instances of licences.

The following are instances of licences:—

Gratuitous Loan of shed for a specified purpose (s).

AGREEMENT to let and take music-hall and gardens for four days for the purpose of giving a series of four concerts; the terms of the agreement showing that the owner was not to give up exclusive possession to the hirer (t).

AGREEMENT under which the owner of lace-machines hired standing room for them in a room in a factory; steam power to be supplied by the owner of the factory, who

(n) Taylor v. Caldwell (1863), 3 B. & S. 826, 832. Cf. Daly v. Edwardes (1900), 83 L. T. 548. It has been considered a circumstance of importance, as showing the intention of the parties that a licence only should be granted, that under the agreement the grantor is to pay all rates, tithes, and taxes: Mogg v. Yatton (1880), 29 W. R. 74.

(σ) [1901] 1 Ch. 578.

(p) D. of Sutherland v. Heathcote, [1892] 1 Ch. 475, 485.

(q) Newby v. Harrison (1861), 1 J. & H. p. 397.

(r) Carr v. Benson (1868), L. R.

3 Ch. at p. 532.

(s) Williams v. Jones (1864), 3 H. & C. 256.

(t) Taylor v. Caldwell (1863), 3 B. & S. 826. As to the holder of a refreshment stall at an exhibition, see Reg. v. Morrish (1863), 32 L. J. M. C. 245. See, too, Frank Warr & Co. v. London County Council, [1904] 1 K. B. 713, 718, where an agreement to "let" the exclusive right to supply refreshments in a theatre during a term of years was held to give merely a licence, and not any interest in land; and Edwardes v. Barrington (1902), 85 L. T. 650. reserved the right of entering the room for the purpose of attending to the running gear (u).

LIBERTY to lay and stack coals upon land (x).

Grant of liberty and licence in consideration of an annual sum of 301. to fasten, and thenceforth keep fastened, a coal hulk to the moorings placed by the Conservators in the river Thames until either party should have given the other one calendar month's notice in writing to determine the licence (y).

Grant of sole and exclusive right or liberty to put or use boats on a canal for the purposes of pleasure, and to let the same for hire for purposes of pleasure only (z).

Grant by a lessee of a licence to fish in the portion of the river comprised in the lease for the whole unexpired residue of the term thereby granted, but the licence not to permit of fishing with more than two rods at a time (a).

A mere licence does not confer any estate in the property to Effect of which it relates (b); the licensee is not liable to be rated as licence. occupier (c); and the licensor cannot, in the absence of an 1 express power of distress, distrain for any annual or other sum which may be reserved as a recompense for the licence (d). licence in fact properly passes no interest, but only makes an action lawful which without it would have been unlawful (e). is determined by an assignment of the subject-matter in respect of which the privilege is enjoyed (f). And a licence, whether under seal or by parol, is revocable (g), unless it is coupled with a grant (h), or unless, upon the faith of it, expense has been

- (u) Hancock v. Austin (1863), 14 C. B. N. S. 634.
- (x) Wood v. Lake (1751), reported 13 M. & W. at p. 848, note (a); Sayer, 3. But see Sugd. V. & P. 14th ed. p. 123. See also Webb v. Paternoster (1620), 2 Rol. Rep. 143, 152; and see 13 M. & W. p. 843.

(y) Watkins v. Overseers of Milton (1868), L. R. 3 Q. B. 350.

- (2) Hull v. Tupper (1863), 2 H. & C. 121.
- (a) Grove v. Portal, [1902] 1 Ch. at p. 732.
- (b) Thomus (1674),٧. Sorrel Vaughan, p. 351.
- (c) Watkins v. Overseers of Milton (1868), L. R. 3 Q. B. 350; L. & N. W. Ry. Co. v. Buckmaster (1875), L. R.

- 10 Q. B. 444; Cory v. Bristow (1877), 2 App. Cas. 262.
- (d) Ward v. Day (1863), 4 B. & S.

337; see p. 349.

(e) Thomas v. Sorrel, supra. See. too, Heap v. Hartley (1889), 42 Ch. D. 461; and the observations upon licences, and particularly as to a distinction between licences for pleasure and licences for profit, in the judgment of Romer, L.J., in Frank Warr & Co. v. London County Council. [1904] I K. B. at pp. 721—723.

(f) Coleman v. Foster (1856), 1

H. & N. 37.

- (q) R. v. Horndon-on-the-Hill (1816),4 M. & S. 562.
- (h) Wood v. Leadbitter (1845), 13 M. & W. 838. Note that in Lowe v.

incurred by the licensee (i). A licence coupled with an interest is irrevocable and capable of assignment (k). A licence to put goods on land, though revocable at any time, involves a permission to the licensee to take the goods away, and the licensee is entitled to notice of revocation, and also to a reasonable time afterwards for removing the goods (l). But though a licence may be revocable, the licensee is entitled to damages if the revocation is a breach of contract (m).

Occupation by a servant.

An occupation of premises by a servant or agent for the more convenient performance of service is in law the occupation of the master and not of the servant, and not the less that the occupation is treated as a partial remuneration for the services (n); and it does not create the relation of landlord and tenant between the parties (o). It is the same where the servant is required by the employer to reside on the premises with a view to the more efficient performance of his services, though he might perform them elsewhere (p); but where the requirement is purely arbitrary on the part of the master, or the occupation is merely permissive and does not lead to the more efficient performance of the duties, the occupation is that of the servant (q); and so, too, where the occupation is solely as remuneration for services (r).

Lease of flat.

If on taking a lease of a flat the parties have bargained on the footing of gas being supplied, the landlord is not entitled to cut off the gas, even though the tenant has not repaid him what he has himself paid for it: his remedy is by action (s). Where the

Adams, [1901] 2 Ch. at p. 600, Cozens-Hardy, J., said, "Whether Wood v. Leadbitter is still good law, having regard to Walsh v. Lonsdale [(1882), 21 Ch. 9], is very doubtful."

(i) Winter v. Brockwell (1807), 8 East, 308; Liggins v. Inge (1831), 7 Bing. 682. See Davies v. Marshall (1861), 10 C. B. N. S. p. 711.

(k) Muskett v. Hill (1839), 5 Bing. N. C. 694. A merely personal licence cannot be assigned: see Re Davis & Co. (1888), 22 Q. B. D. 197.

(l) Cornish v. Stubbs (1870), L. R. 5 C. P. 334; Mellor v. Watkins (1874), L. R. 9 Q. B. 400; Aldin v. Latimer, Clark & Co., [1894] 2 Ch. 437. Cf. Wilson v. Tavener, [1901] 1 Ch. 578. (m) Kerrison v. Smith, [1897] 2

Q. B. 445. Cf. Smart v. Jones (1864), 15 C. B. N. S. 717.

(n) Bertie v. Beaumont (1812), 16

East, 33, 36; Rex v. Kelstern (1816), 5 M. & S. 136; Rex v. Cheshunt (1818), 1 B. & Ald. 473; Hunt v. Colson (1833), 3 Moo. & Sc. 790; White v. Bayley (1861), 10 C. B. N. S. 227.

(o) Mayhew v. Suttle (1854), 4 E. & B. 347.

(p) Fox v. Dalby (1874), L. R. 10 C. P. 285; Reg. v. Spurrell (1865), L. R. 1 Q. B. 72; Dobson v. Jones (1844), 5 Man. & Gr. 112.

(q) Smith v. Seghill (1875), L. R.

10 Q. B. 422.

(r) Hughes v. Overseers of Chatham (1843), 5 Man. & Gr. p. 78; Marsh v. Estcourt (1889), 24 Q. B. D. 147. But see Doe v. Derry (1840), 9 C. & P. 494.

(s) Hersey v. White (1893), 9 T. L. R. 335. landlord undertakes to employ a porter, the Court will not interfere to compel a proper appointment being made (t).

Unless it is otherwise stipulated at the time of taking lodgings, Lodgers. a lodger is entitled to the use of the general conveniences of the house (u). The law imposes no obligation on a lodging-house keeper to answer for the goods of his lodger (x), and in the absence of gross negligence he is not liable for their loss (y).

(t) Ryan v. Mutual Tontine, &c.,

Association, [1893] 1 Ch. 116.
(u) Underwood v. Burrows (1835),

7 C. & P. 26.
(x) Holder v. Soulby (1860), 8

C. B. N. S. 254.

(y) Clench v. D'Arenberg (1883),

C. & E. 42; Espir v. Todd (1883),

C. & E. 154.

CHAPTER II.

THE DIFFERENT KINDS OF TENANCY.

		PAC	}E
SECT.	I.	TENANCY BY SUFFERANCE	90
Sect.	II.	TENANCY AT WILL	91
			91
			93
SECT.	III.		93
			34
		How implication may be rebutted	3 5
			97
SECT.	IV.		99
SECT.	V.	TENANCY FOR LIFE	0 0

SECT. I.—TENANCY BY SUFFERANCE.

Instances.

A TENANT by sufferance is one who at first came in by a lawful demise, but after his estate is ended wrongfully holds over (a); as, for instance, a tenant for the life of another (b), or for years determinable on life, who continues in possession after the decease of the person for whose life he holds (c); or a tenant who holds over after his lease has determined by the death of a lessor who was only tenant for life (d); or a tenant for years who holds over after the expiration of his term (e); or an under-tenant who continues in possession after the determination of the original lease (f); or a lessee at will who keeps possession after the will has been determined by the death of the lessor or otherwise (g).

This so-called tenancy was probably originally a mere device to prevent adverse possession from taking place, but under the present law it has no such effect (h). It necessarily implies the absence of any agreement between the parties, and by the assent of the owner to the continuance of possession by the tenant it

Effect of assent of owner.

- (a) Co. Litt. 57 b. (b) Allen v. Hill (1590), Cro. Eliz. 238.
- (c) Co. Litt. 57 b. See judgment in Shields v. Atkins (1747), 3 Atk. p. 562.
- (d) Roe v. Ward (1789), 1 H. Bl. 96.
- (e) Co. Litt. 57 b, 270 b. See Bayley v. Bradley (1848), 5 C. B. 396.
- (f) Simkin v. Ashurst (1834), 1 Cr. M. & R. 261; 4 Tyr. 781.
- (g) Doe v. Turner (1840), 7 M. & W. 226; 9 M. & W. 643. For other instances of tenancy by sufferance, see Doe v. Lawder (1816), 1 Stark. 308; Doe v. Quigley (1810), 2 Camp. 505; Day v. Day (1871), L. R. 3 P. C. 751, p. 760.
 - (h) Infra, Chap. vii., Sect. v. (2) (ii).

will be converted into a tenancy at will, or by payment of rent with reference to a yearly holding a tenancy from year to year may be created (i).

Against the Crown there can be no tenancy by sufferance (k).

SECT. II.—TENANCY AT WILL.

"Tenant at will is where lands or tenements are let by one How created. man to another, to have and to hold to him at the will of the lessor, by force of which lease the lessee is in possession. In Expressly. this case the lessee is called tenant at will, because he hath no certain nor sure estate, for the lessor may put him out at what time it pleaseth him "(l). But every lease at will must in law be at the will of both parties, and therefore when a lease is made to have and to hold at the will of the lessor, the law implies it to be at the will of the lessee also; and when a lease is made to have and to hold at the will of the lessee, this must be also at the will of the lessor (m).

Tenancy at will arises by contract (n) and may be created by express agreement (o), but it also arises by implication where By implicapremises are in the occupation of a person holding them with the consent of the owner—that is, "an affirmative consent, and not a mere negative or silent consent "(p)—but not having any freehold estate or definite term in them (q). Hence a tenancy at will is implied in the following cases:---

Where a person lives in a house rent free by the permission of 1. Occupathe owner (r); provided the occupation is not in the capacity of by permission servant or agent, or as a mere remuneration for services (s). of owner. Thus a Dissenting minister who occupies a house under trustees in whom the legal estate is vested, occupies as tenant at will (t).

Formerly a tenancy at will arose by implication where posses- 2. Occupasion was taken with the consent of the intended lessor (u), under

tion under agreement for lease, or void lease.

- (i) Bishop v. Howard (1823), 3 Dow. & R. 293.
 - (k) Co. Litt. 57 b.
 - (/) Litt. sect. 68.
 - (m) Co. Litt. 55 a.
- (n) Ley v. Peter (1858), 3 H. & N. 101, per Bramwell, B., p. 107.
- (o) Richardson v. Langridge (1811), 4 Taunt. 128; Doe v. Cox (1847), 11 Q. B. 122.
- (p) Ley v. Peter (1858), 3 H. & N. p. 108.
 - (q) Doe v. Pullen (1836), 2 Bing.

- N. C. 749.
- (r) Rex v. Collett (1823), R. & R. C. C. 498; Rex v. Jobling (1823), R. & R. C. C. 525; Doe v. Groves (1847), 10 Q. B. 486. See Smith v. Seghill (1875), L. R. 10 Q. B. p. 429.
 - (s) Supra, p. 88.
- (t) Doe v. Jones (1830), 10 B. & C. 718; Due v. M'Kaey (1830), 10 B. & C. 721; Perry v. Shipway (1859), 1 Giff. 1.
- (u) See Doe v. Quigley (1810), 2Camp. 505.

an agreement for a lease (x), or under an invalid lease (y), and no rent had been paid. But, as already explained (z), an intending lessee who has entered into possession under an agreement for a lease which is capable of being specifically enforced now holds, in some cases, as though the lease had been actually granted in pursuance of the agreement. But a tenancy at will arises where possession is taken provisionally during negotiations for a lease (a).

3. Occupation under purchase agreement.

Where possession is taken in pursuance of an agreement for the sale of premises (b). In the absence of an agreement to pay for the occupation, no action for use and occupation can be brought against the vendee whilst he is in possession under the contract of sale, because, although a tenant at will, he is not bound to pay rent (c). After the purchase has gone off, the person remaining in possession still continues tenant at will, but as the payment of the purchase-money, which was to be the compensation for his occupation, is then at an end, he becomes from that time liable to an action for use and occupation (d).

4. Holding over during treaty for new lease.

Where a tenant, after his lease has expired, is permitted (e) to continue in possession pending a treaty for a new lease (f). But if he was in possession under a lease for a year, and by the lessor's consent holds over as tenant, the law implies a tacit renovation of the contract, with the result that he becomes a tenant from year to year (g).

5. Indefinite letting.

A mere general letting (h), or a simple permission to occupy,

(x) Coatsworth v. Johnson (1886), 55 L. J. Q. B. 220; judgment of Littledale, J., in Humerton v. Stead (1824), 3 B. & C. at p. 483; judgment of Parke, B., in Braythwayte v. Hitchcock (1842), 10 M. & W. at p. 497; Anderson v. Midland Ry. Co. (1861), 3 E. & E. 614. See Regnart v. Porter (1831), 7 Bing. 451.

(y) Goodtitle v. Herbert (1792), 4 T. R. 680; Denn v. Fearnside (1747),

1 Wils. 176.

(z) Supra, pp. 81, 82.

(a) Coggan v. Warwicker (1852), 3 C. & K. 40. See Pollen v. Brewer

(1859), 7 C. B. N. S. 371.

(b) Right v. Beard (1811), 13 East, 210; Doe v. Jackson (1823), 1 B. & C. 448; Doe v. Miller (1833), 5 C. & P. 595; Doe v. Rock (1842), Car. & M. 549, 4 M. & Gr. 30; Ball v. Cullimore (1835), 2 Cr. M. & R. 120; Doe v. Chamberlaine (1839), 5 M. & W.

14; Howard v. Shaw (1841), 8 M. & W. 118.

(c) Winterbottom v. Ingham (1845), 7 Q. B. 611; Hearn v. Tomlin (1793), Peake, N. P. C. 192; Kirtland v. Pounsett (1809), 2 Taunt. 145. See Tew v. Jones (1844), 13 M. & W. 12.

(d) Judgments of Parke, B., and Alderson, B., in *Howard* v. *Share* (1841), 8 M. & W. 118; *Markey* v. *Coate* (1876), Ir. R. 10 C. L. 149, 155.

(e) If there is no evidence of the landlord's permission, the tenancy will be at sufferance only: Simkin v. Ashurst (1834), 1 Cr. M. & R. 261.

(f) Doe v. Stennett (1799), 2 Esp. 717, 719.

(y) Right v. Darby (178ô), 1 T. R. 159, at pp. 162, 163; Dougal v. McCarthy, [1893] 1 Q. B. 736.

(h) Judgment of Chambre, J., in Richardson v. Langridge (1811), 4 Taunt. at p. 132; Roe v. Lees (1778),

creates a tenancy at will, unless there are circumstances to show an intention to create a tenancy from year to year; as, for instance, an agreement to pay rent by the quarter, or some other aliquot part of the year (i).

A cestui que trust, who is in possession of an estate by the 6. Occupaconsent or acquiescence of the trustee, is regarded at law as his que trust. tenant at will (k). But this doctrine only applies where the cestui que trust is the actual occupant; where he is merely allowed to receive the rents, or otherwise deal with the estate in the hands of occupying tenants, he is only the agent or bailiff of the trustee (l).

tion by cestui

In all these cases, however, payment of rent by the tenant Effect of paywith reference to a yearly holding (m), or an admission by him of a charge of a part of a yearly rent in an account between him and his landlord (n), will raise a presumption of a change from a tenancy at will into a tenancy from year to year. But rent may be expressly reserved upon a lease at will, and payment in pursuance of such reservation will not change the character of the tenancy (o).

SECT. III.—TENANCY FROM YEAR TO YEAR.

Tenancy from year to year differs from tenancy at will in the Distinguished notice required to be given by landlord or tenant in order to at will. determine the tenancy (p); but a tenancy from year to year created in express terms by the language of an attornment clause in a mortgage deed is not turned into a tenancy at will by a power to re-enter without notice being given to the mortgage q. A tenancy from year to year does not determine and recommence with every year (r), but the tenant has a lease for one year certain, with a growing interest during every year thereafter, springing out of the original contract, and parcel of it (s).

from tenancy

2 W. Bl. at p. 1173. But see Doe v. Watts (1797), 7 T. R. at p. 85.

(i) Per Parke, B., in Doe v. Wood (1845), 14 M. & W. at p. 687; Doe v. Gardiner (1852), 12 C. B. 319. See In re Stroud (1849), 8 C. B. 502; Fitzmaurice v. Bayley (1857), 8 E. & B. at p. 679.

(k) Garrard v. Tuck (1849), 8 C. B. 231.

(1) Melling v. Leak (1855), 16 C. B. 652, 669.

(m) See Doe v. Wood (1845), 14 M. & W. 682, 687.

(n) Cox v. Bent (1828), 5 Bing. 185. See Vincent v. Godson (1854),

4 D. M. & G. p. 553.

(o) Doe v. Cox (1847), 11 Q. B. 122; Doe v. Davies (1851), 7 Ex. 89.

(p) Infra, Chap. vi., Sect. 1 (3). (q) Re Threlfall (1880), 16 Ch. D. 274.

(r) Tomkins ∇ . Lawrance (1839), 8 C. & P. 729, contrà, is overruled. See Reg. v. Thornton (1860), 2 E. & E. p. 792.

(s) Cattley v. Arnold (1859), 1 J. & H. 651; Wright v. Tracey (1874), 8 a similar rule holds with regard to other recurring tenancies, such as weekly tenancies (t).

This tenancy may be either expressly created, by letting premises to hold "from year to year" (u); or may arise by implication where rent(x) is paid in respect of the occupation of premises, and with reference to a yearly holding (y).

Formerly where a person had entered into possession of premises and paid rent (z) under a void lease (a), or under an agreement for a lease (b)—although such agreement was unwritten, and therefore invalid (c), and no lease had ever been tendered by the lessor or demanded by the lessee (d)—he was presumed to be tenant from year to year upon such of the terms of the agreement as were consistent with that tenancy (e), and reference might be made to the instrument to ascertain the terms of the tenancy (f), including the dates of the beginning and ending of the year (g). A tenancy from year to year might arise in this way under a

Where implied.

1. Entry and payment of rent under void lease or agreement.

> Ir. R. C. L. 478; Gandy v. Jubber (1865), 9 B. & S. 15; Oxley v. James (1844), 13 M. & W. 209, per Parke, B., at p. 214.

> \cdot (t) Bowen v. Anderson, [1894] 1 Q. B. 164; dissenting from Sandford v. Clarke (1888), 21 Q. B. D. 398.

(u) Infra, p. 148. Where a right of way was granted to A., his heirs and assigns, A. being a tenant from year to year, who subsequently to the grant acquired the fee, it was held that the right of way went with the freehold title thus acquired: Rymer v. McIlroy, [1897] 1 Ch. 528.

(x) Or a render in the nature of rent. See Doe v. Morse (1830), 1 B.

& Ad. p. 369.

(y) Per Parke, B., in Braythwayte v. Hitchcock (1842), 10 M. & W. at p. 497. See Doe v. Wood (1845), 14 M. & W. 682; Reg. v. Norwich Incorporation (1874), 30 L. T. 704.

(z) See Cox v. Bent (1828), 5 Bing. 185; supra, p. 93. See Vincent v. Godson (1854), 4 D. M. & G. 546.

(a) Doe v. Bell (1793), 5 T. R. 471; Doe v. Watts (1797), 7 T. R. 83; Clayton v. Blakey (1798), 8 T. R. 8 (see notes to this case in 2 Sm. I. C. 11th ed. p. 128); Richardson v. Gifford (1834), 1 A. & E. 52; Doe v. Collinge (1849), 7 C. B. 939, 960; Lee v. Smith (1854), 9 Ex. 662; Doe v. Taniere (1848), 12 Q. B. 998, 1013;

Doe v. Moffatt (1850), 15 Q. B. 257; Tress v. Savage (1854), 4 E. & B. 36; Martin v. Smith (1874), L. R. 9 Ex. **50.**

(b) Doe v. Smith (1827), 1 Man. & Ry. 137; Mann v. Lovejoy (1826). Ry. & M. 355; Knight v. Benett (1826), 3 Bing. 361; Cox v. Bent, supra; Doe v. Amey (1840), 12 A. & E. 476; Doe v. Foster (1846), 3 C. B. 215; Chapman v. Towner (1840), 6 M. & W. 100; Braythwayte v. Hitchcock (1842), 10 M. & W. 494; Bennett v. Ireland (1858), E. B. & E. 326. See Bolton v. Tomlin (1836), 5 A. & E. 856.

(c) Knight v. Benett (1826), 3 Bing.

(d) Weakly v. Bucknell (1776),

Cowp. 473.

(e) 2 Smith, L. C. 11th ed. 120; Doe v. Bell, supra; Richardson v. Gifford, supra; Doe v. Amey, supra; Mann v. Lovejoy, supra; Beale v. Sanders (1837), 3 Bing. N. C. 850; Tress v. Savage, supra; Roe v. Ward (1789), 1 H. Bl. 97.

(f) Per Martin, B., in Lee v. Smith (1854), 9 Ex. at p. 665; Bolton v. Tomlin (1836), 5 A. & E. 856; De Medina v. Polson (1815), Holt, N. P. See Cumberland v. Bowes (1854),

15 C. B. 348.

(y) Kelly v. Patterrson (1874),L. R. 9 C. P. 681.

corporation, although there had been no demise under seal (h), unless the possession could be otherwise explained (i); but it seems that a corporation could not thus become tenants from year to year (k). The tenancy thus implied ceased without any notice to quit at the end of the term mentioned in the instrument (1). But now, where possession has been given and taken under a specifically enforceable agreement for a lease, the tenant is, in some cases, in the same position as though the lease had been granted in pursuance of the agreement (m).

A tenant who continues in occupation after his lease has 2. Holding expired, and pays rent, is presumed to hold as tenant from year to year on such of the covenants and conditions of the former lease as are applicable to a tenancy from year to year (n). Where a bankrupt tenant continues to occupy, and the trustee takes no steps, he holds after his discharge as tenant from year to year on the terms of the original agreement (o).

over and payment of rent after expiration of lease.

Where the lessee under a lease which becomes void on the 3. Holding death of the lessor continues in possession of the demised premises after that event, and pays rent to the succeeding owner, the latter, by accepting such rent, admits that the person in possession is his tenant from year to year, and, in the absence of evidence to the contrary, the tenancy will be upon such of the former terms as are consistent with a yearly tenancy (p).

over and payment of rent under lease made by tenant for

In order to give rise to the presumption of a tenancy from year to year in the above cases it is necessary that possession should be taken or kept under such circumstances as to allow a contract for such a tenancy to be implied; and whether this is so or not is a question for a jury to decide on the circumstances

Presumption of tenancy from year to year may be rebutted. 1. By proof

that possession was not taken under implied tenancy.

- (h) Doe v. Taniere (1848), 12 Q. B. 998; Wood v. Tute (1806), 2 B. & P. N. B. 247; Ecclesiastical Commissioners v. Merral (1869), L. B. 4 Ex. 162,
- (i) Re Northumberland Avenue Hotel Co. (1886), 33 Ch. D. p. 20, per Cotton, L.J.

(k) Finlay v. Bristol and Exeter

Ry. Co. (1852), 7 Ex. 409.

- (1) Doe v. Stratton (1828), 4 Bing. 446; Berrey v. Lindley (1841), 3 M. & Gr. p. 513; Doe v. Moffatt (1850), 15 Q. B. 257; Tress v. Savaye (1854), 4 E. & B. 36.
 - (m) Supra, pp. 81, 82.
 - (n) Digby v. Atkinson (1815), 4

Camp. 275; Bishop v. Howard (1823), 2 B. & C. 100; Hyatt v. Griffiths (1851), 17 Q. B. 505; Finch v. Miller (1848), 5 C. B. 428; Dougal v. McCarthy, [1893] 1 Q. B. p. 740, per Lord Esher, M.R. As to effect of holding over by the mesne tenant upon a sub-tenancy, see Peirse v. Sharr (1828), 2 Man. & Ry. 418.

(o) Ponsford v. Abbott (1884),

C. & E. 225.

(p) Doe v. Watts (1797), 7 T. R. 83; Doe v. Morse (1830), 1 B. & Ad. 365, 369; Wyatt v. Cole (1877), 36 L. T. 613. See Cornish v. Stubbs (1870), L. R. 5 C. P. 334.

circumstances under which rent was paid or received.

of each case (q). The rent must also have been paid with reference to a yearly holding (r). But the receipt of rent is only evidence; it is not conclusive proof of the creation or ratification 2. By proof of a tenancy (s). It is competent to either the payer or receiver of rent to prove the circumstances under which the payment was made, and by such circumstances to repel the legal implication which would arise from the receipt of rent-unexplained (t). Thus, a landlord, who has received rent from a tenant holding over, may show that such rent was accepted by him in ignorance of the death of a person for whose life the premises were held (u). A substantial disparity between the rent paid and the value of the premises, may be a ground for deciding against a tenancy from year to year (x); and such a tenancy is not implied from payment of rent for lodgings, though paid with reference to a year or an aliquot part thereof (y).

Presumption that tenancy is at former terms may also be rebutted.

The presumption that the tenancy from year to year implied from possession under a void lease or an agreement for a lease is on the terms of a lease or agreement, or that the similar tenancy implied from holding over after the expiration of a lease is on the terms of the expired lease, may be rebutted by evidence of an intention to hold on different terms. The terms of the holding are matter of evidence rather than of law, and the question is one of fact for the jury (z). A mere alteration in the rent will not, however, rebut the presumption that the tenant holds on the other terms of the former contract (a). sioner who has received rent under a lease granted by a tenant for life, which determined on his death, may show that he was

(q) Finlay v. Bristol and Exeter Ry. Co. (1852), 7 Ex. at pp. 417, 420; Jones v. Shears (1836), 4 A. & E. 832.

(r) Braythwayte v. Hitchcock (1842), 10 M. & W. 494, 497. See Richardson v. Langridge (1811), 4 Taunt. 128, 132; Doe v. Wood (1845), 14 M. & W. 682; R. v. Herstmonceux (1827), 7 B. & C. 551.

(s) Smith v. Widlake (1877), 3 C. P. D. 10. See Doe v. Morse (1830), 1 B. & Ad. 365; Finlay v. Bristol and Exeter Ry. Co. (1852), 7 Ex. p. 420; Doe v. Taniere (1848), 12

Q. B. p. 1013. (t) Per Wilde, C.J., in Doe v. Crago (1848), 6 C. B. at p. 98; Camden v. Butterbury (1860), 7 C. B. N. S. 864; Right v. Bawden (1803), 3 East, 260; Mildmay v. Shirley (1806), cited in 10 East, 164; Doe v. Francis (1837), 2 Moo. & R. 57.

(u) Doe v. Crago (1848), 6 C. B. 90. (x) R. v. Prideaux (1808), 10 East, 158; Smith v. Widlake (1877), 3 C. P. D. 10.

(y) Wilson ∇ . Abbott (1824), 3 B. & C. 88.

(z) Mayor of Thetford v. Tylor (1845), 8 Q. B. 95; Johnson v. St. Peter's, Hereford (1836), 4 A. & E. 520; Elgar v. Watson (1842), Car. & M. 494; ()akley v. Monck (1866), L. R. 1 Ex. 159. SALL

(a) Digby v. Atkinson (1816), 4 Camp. 275; Doe v. Geekie (1844), 5 Q. B. 841.

ignorant of a special covenant on the part of the lessor contained in such lease; and in that case, if there is no other evidence that he agreed to the tenancy continuing on the former terms than such payment and receipt of rent, he will not be bound by the covenant (b).

An implied tenancy from year to year is presumed to commence Commenceon the same day of the year as the original tenancy (c); but this also has been held to be a question for the decision of a jury, tenancy. upon a consideration of all the facts of each case (d).

implied

When it is said that a person becoming tenant from year to year may be deemed to hold over on the terms of a prior lease, that rule cannot be confined to such terms as are necessarily incident to a yearly tenancy, for it would then have no meaning. It must include such terms as may be incident to such a tenancy (e). The following terms have been held to be consistent Terms conwith a tenancy from year to year:—Covenants to keep premises in repair (f); to pay rent (damage by fire excepted) (g); to keep year to year. open a shop, and to use best endeavours to promote the trade of it during the tenancy (h); that the tenant may retain and sow forty acres of wheat on the arable land demised at the seed time next after the end of the term, and have the standing thereof until the harvest then next following, rent free, with the use of premises for threshing, &c., till a certain day (i); that an outgoing tenant shall be paid for tillages on the expiration of his tenancy (k), or shall have away-going crops (l); that the tenant shall leave all the manure upon the farm at the end of his tenancy(m); covenants against taking successive crops of

sistent with tenancy from

(b) Oakley v. Monck, supra. (c) Roe v. Ward (1789), 1 H. Bl. 97; Doe v. Weller (1798), 7 T. R. 478.

(d) Walker v. Gode (1861), 6 H. & N. 394. See observations of Pollock, C.B., in Oakley v. Monck (1865), 3 H. & C. at p. 714; also Doe v. Samuel (1804), 5 Esp. 173, 174.

(e) Per Patteson, J., in Hyatt v. Virifiths (1851), 17 Q. B. 509.

(f) Richardson v. Gifford (1834), 1 A. & E. 52; Arden v. Sullivan (1850), 14 Q. B. 832; Buckworth v. Simpson (1835), 1 Cr. M. & R. 834; Beale v. Sanders (1837), 3 Bing. N. C. 850; Wyatt v. Cole (1877), 36 L. T. 613; Ecclesiastical Commissioners v. Merral (1869), L. R. 4 Ex. 162. And this may involve liability to rebuild after fire: Digby v. Atkinson (1815), 4 Camp. 275. And see judgment in Doe v. Amey (1840), 12 A. & E. at p. 479; and per Erle, J., in Rowes v. Croll (1856), 6 E. & B. at p. 264.

(g) Bennett v. Ireland (1858), E.B. & E. 326.

(h) Sanders v. Karnell (1858), 1 F. & F. 356.

(i) Hyatt ∇ . Griffiths (1851), 17 Q. B. 505.

(k) Brocklington v. Saunders (1864), 13 W. R. 46.

(1) Boraston v. Green (1812), 16 East, 71. See Hutton v. Warren (1836), 1 M. & W. 466.

(m) See Roberts v. Barker (1833), 1 Cr. & M. 808.

corn(n); and stipulations for the cultivation of lands on any specified system (o); reservation of the rent payable in advance(p); provisoes for re-entry on non-payment of rent, or non-performance of covenants (q); or (in the case of a mining lease), that the tenancy may be determined by a six months' notice, expiring at any time (r); also a stipulation that the tenancy shall be determinable at a particular time (s); and a provision in a lease of nursery gardens that the lessor shall pay the lessee for all fruit trees and shrubs which shall have been planted by him, and shall be upon the demised premises at the determination of the lease (t).

Terms inconsistent with tenancy from year to year.

The following terms are inconsistent with a tenancy from year to year (u):—Covenants by tenant to build, or to do such substantial repairs as are not usually done by tenants from year to year (x); to paint once in three years (y), unless, indeed, he occupies for that time (z); and to put premises in repair before he commences his occupation (y): also provisions that the tenant shall not be disturbed, or his rent raised (a).

Apart from any question of a yearly tenancy, a lessee who has actually enjoyed for the full term cannot afterwards say that the covenants stipulated to be contained in the lease are not binding (b).

Lands Clauses Act of 1845 (8 & 9 Vict. c. 18), s. 121.

It may here be noticed that, where land compulsorily taken under the Lands Clauses Acts is in the possession of a tenant from year to year, then, if the tenant is required to give up possession of any land so occupied by him before the expiration

(n) Doe v. Amey (1840), 12 A. & E.

(o) Per Martin, B., in Tooker v. Smith (1857), 1 H. & N. 736; Roe v. Ward (1789), 1 H. Bl. 97, 99.

(p) Lee \forall . Smith (1854), 9 Ex. 662; Finch v. Miller (1848), 5 C. B. 428.

(q) Thomas v. Packer (1857), 1 H. & N. 669; Doe v. Amey (1840), 12 A. & E. 476; Crawley v. Price (1875), L. R. 10 Q. B. 302.

(r) Bridges v. Potts (1864), 17 C. B. N. S. 314.

(s) See per Maule, J., in Berrey v. Lindley (1841), 3 M. & Gr. at p. 514.

(t) See per Willes, J., in Oakley v. Monck (1866), L. R. 1 Ex. p. 164.

(u) In Tooker v. Smith (1857), 1 H. & N. 732, a stipulation in an agreement, for the continuance of a tenancy until the expiration of two years' notice to quit given by one of the parties to the other, was considered by the Court of Exchequer to be inapplicable to the tenancy from year to year implied by law from occupancy and payment of rent under the agreement. But see now Walsh v. Lonsdale (1882), 21 Ch. D. 9, supra, p. 81.

(x) See per Erle, J., in Bowes v. Croll (1856), 6 E. & B. at p. 264.

(y) See judgments of Tindal, C.J., and Parke, J., in Pinero v. Judson (1829), 6 Bing. at pp. 210, 211.

(z) Martin v. Smith (1874), L. R. 9 Ex. 50.

(a) See Kusel v. Watson (1879), 11 Ch. D. p. 133.

(b) Pistor v. Cater (1842), 9 M. & W. 315. See per Cave, J., in Adams v. Clutterbuck (1883), 10 Q. B. D. p. 406. of his tenancy, he is, by virtue of sect. 121 of the Act of 1845, entitled to compensation for the value of his unexpired interest in the land, and the amount of the compensation is to be determined in case of difference by two justices. In such a case the justices have no jurisdiction to inquire into the claimant's title; but they are bound to inquire whether he has in fact been required to give up possession before the expiration of his tenancy (c).

SECT. IV.—TENANCY FOR A TERM OF YEARS.

Tenancy for a term of years is distinguished from tenancy Distinguished from year to year by certainty of duration; by no notice being from tenancy from year required to determine it; and by its being always the result of to year. express contract. There is no such thing known to the common law as a lease in perpetuity (d), though a lease for a term may contain a covenant for perpetual renewal (e). But provided some limit is placed on the duration of the lease it matters not how remote this limit may be.

Every contract sufficient to make a lease for years ought to Certainty have certainty in three limitations, viz., in the commencement of the term, in the continuance of it, and in the end of it: and these three are in effect but one matter, showing the certainty of the time for which the lessee shall have the land, and if any of these fail, it is not a good lease, for then there wants certainty (f).

requisite.

The duration of a lease for years may, however, be made to Lease for depend upon a contingency, provided a fixed number of years is to continfirst specified, for which the lease is to last if not previously gency. determined by the happening of the condition. Thus, a lease may be granted for twenty-one years if the tenant shall so long continue to occupy the premises (g), or for twenty years if the coverture between certain persons named shall so long continue (h); or for years dependent upon the duration of a life or

(c) Great Northern and City Railway v. Tillett, [1902] 1 K. B. 874.

(d) Sevenoaks Ry. Co. v. L. C. & D. Ry. Co. (1879), 11 Ch. D. 625, 635.

(e) See Pollock v. Booth (1875), Ir. R. 9 Eq. 229. A lease for ever at a rent, if made by deed in favour of the lessee and his heirs, is equivalent to a conveyance in fee subject to a rent-charge; if not made by deed, it becomes on payment of rent a tenancy from year to year: Doe v.

Gardiner (1852), 12 C. B. 319.

(f) Say v. Smith (1564), Plow. 272. See infra, p. 146, for construction of provisions as to commencement of leases; and Bac. Abr. (L. 3) 835.

(g) Doe v. Clarke (1807), 8 East, 185. As to the construction of this condition, see Doe v. Steward (1834), 1 A. & E. 300.

(h) Bac. Abr. (L. 3) 836.

lives (i); or for a term of years if the lessee shall so long live and continue in the lessor's service (k).

Leases may also be made for years determinable on the death of the lessee, or after six months' notice by his executors, or at the quarter-day next after his death (l).

Leases for years may be made determinable at specified periods, at the option of the lessor or lessee (m). A lease for three, six, or nine years is a lease for nine years, determinable at the end of three or six years (n).

Lease for years, with option to take further term.

Leases for years deter-

minable at

option of lessee or

lessor.

Agreements capable of being enforced may also be made for granting leases for fixed terms of years and afterwards from year to year (o), or from year to year with an option for the lessee to take a lease for a term (p), or for a term with an option to take a lease for a further term (q). This option may, unless it is otherwise stipulated, be exercised by the tenant at any time during the continuance of the tenancy, though after the expiration of the term of years first specified (q), and it will pass to his trustee in bankruptcy (r).

SECT. V.—TENANCY FOR LIFE.

Leases for life must be made by deed (s), and may be either for the life of the lessee or for the life or lives of some other person or persons, and in the latter case either for their joint lives or for the life of the survivor (t); also for the lives of the lessee himself and of some other person or persons, and this constitutes a single estate (u).

The estate taken by a tenant for life under a settlement must

(i) Hughes and Crowther's Case (1610), 13 Rep. 66.

(k) Wrenford v. Gyles (1599), Cro. Eliz. 643. In this case the majority of the Court held that the lease would not determine on the death of the lessor.

(l) See the agreement in Nesham v. Selby (1872), L. R. 13 Eq. 191.

(m) See Colton v. Lingham (1815), 1 Stark. 39; Grey v. Friar (1854), 5 Ex. 584; 4 H. L. Cas. 565.

(n) Goodright v. Richardson (1789), 3 T. R. 462. See Ferguson v. Cornish (1760), 2 Burr. 1032; 3 T. R. 463, note (a). As to the exercise of the option, see infra, Chap. VI., sect. I. (4).

(a) Brown ∇ . Trumper (1858), 26

Beav. 11; Jones v. Nixon (1862), 1 H. & C. 48.

(p) See Hersey v. Giblett (1854), 18 Beav. 174.

(q) Moss v. Barton (1866), L. R. 1 Eq. 474.

(r) Buckland v. Papillon (1866), L. R. 2 Ch. 67.

(s) Browne v. Warner (1807), 14 Ves. 156, 158; Doe v. Browne (1807), 8 East, 165; Cheshire Lines Committee v. Lewis (1880), 50 L. J. Q. B. 121. See Re King's Leasehold Estates (1873), L. R. 16 Eq. 521; and infra, p. 149.

(t) As to the construction of leases for lives, see infra, p. 148.

(u) Co. Litt. 41 b. See Wright v. Cartwright (1757), 1 Burr. 282.

be distinguished from the estate of a lessee for life or lives holding merely under a lease at a rent. The former can, while his estate is in possession, exercise all the powers conferred by the Settled Land Act, 1882, while the latter cannot (x).

If one grant by deed lands or tenements, and express or limit Indefinite grant. no estate, the grantee has an estate for life (y); unless the whole deed taken together suggests a different construction (z).

(x) Settled Land Act, 1882, s. 58 Cartwright (1757), 1 Burr. 282. (1) (iv); supra, p. 47. (z) See judgment in Doe v. D (y) Co. Litt. 41 b. See Wright v. (1838), 5 B. & Ad. pp. 692—694. (z) See judgment in Doe v. Dodd

CHAPTER III.

THE CONTRACT OF TENANCY.

~ -	^	PAGE
SECT. I.	AGREEMENTS FOR LEASES	. 103
	(1) Conclusion of contract	. 103
	(2) Requisites for enforcement of contract	. 105
	(i) Memorandum in writing	. 105
	(ii) Part performance	. 111
	(3) Rights of intended lessee	. 113
	(4) Remedies for breach of agreement	. 115
	Action for damages	. 115
	Specific performance	. 116
	(5) Stamps	. 122
SECT. II.	Leases Generally	. 124
	(1) Statutory requisites	. 124
	In what cases leases may be made by parol .	. 124
	(2) In what cases extrinsic evidence is admissible	. 120
	(3) Form and construction of lease	. 130
	Date	. 131
	Recitals	. 131
	Consideration	. 131
	Operative words	. 132
	Parcels	. 132
	Rule of "falsa demonstratio"	. 132
	Meaning of terms	. 134
	Easements	. 137
	Fixtures	. 141
	Exceptions and reservations	. 141
	Habendum	. 145
	Commencement of term	. 145
	Duration of term	. 147
	For years	. 147
	From year to year	. 148
	For life	. 148
	Reddendum	. 150
	Covenants	. 153
	Usual covenants	. 154
	Dependent or independent	. 158
	Joint or several	. 159
	Liability of assigns	. 161
	Difficulty of performance	. 162
	Illegality	. 163
	Damages for breach	. 163
	Option of purchase	. 164
	,, to determine lease	. 166
	Covenant for renewal	. 166
	Proviso for re-entry	. 168
	Power to resume possession	. 174
	(4) Stamps	175

					-	PAGE
SECT. II.	LEASES GENERALLY—continued.					
	(5) Counterparts and duplicates	•	ı	•	•	180
•	Stamps	•		•	•	182
	(6) Matters relating to the completion of leases		1	•	•	182
	Execution			•	•	182
	Delivery as escrow			•		183
	Effect of non-execution by lessor .	_ `				183
	alterations after execution .	•		•	•	184
	Registration		•		•	185
	under the Land Transfer Acts			•	•	186
	Custody of lease	'	•	•	•	187
	Costs	•		•	•	188
			•	•	•	189
	Remuneration Order	•		•	•	
	Entry of lessee	•	•	•	•	190
	(7) Rectification of lease	•		•	•	192
SECT. III.	MINING LEASES AND LICENCES			•		192
	(1) Mining leases					192
	(2) Mining licences	-	•	•	•	213

SECT. I.—AGREEMENTS FOR LEASES.

(1) Conclusion of Contract.

In order to constitute a valid agreement for a lease there must Assent of be an unequivocal assent (a) of the intending landlord and tenant to all the terms of the agreement (b). Hence, where the agreement is alleged to have been constituted by offer and acceptance, the answer to the offer must, in order to constitute a binding agreement, be a plain, unequivocal, and unconditional acceptance of the terms proposed, without the introduction of any new or different term (c). There is no agreement while one side is entitled to object, and does object, to some of the terms (d). But where an intending tenant's solicitors sent a draft agreement for a lease, "altered as our client will agree to," to the landlord's solicitors, who, after fruitlessly suggesting some further alterations, finally wrote that the landlord accepted the draft as sent, it was held that what had taken place amounted to an offer by the intending tenant which continued until it was accepted by the landlord, with the result that, upon that acceptance, a binding

(u) Clarke v. Fuller (1864), 16 C. B. N. S. 24; Forster v. Rowland (1861), 7 H. & N. 103; Nesham v. Solby (1872), L. R. 13 Eq. 191; 7 Ch. 406.

(b) Warner v. Willington (1856), 3 Drew. 523; Crossley v. Maycock (1874), L. R. 18 Eq. 180; Rossiter v. Miller (1878), 3 App. Cas. at p. 1151; Donnison v. People's Cufé Co. (1881), W. N. p. 107; Jones v. Daniel, [1894] 2 Ch. 332; Stanley v. Dowdeswell

(1874), L. R. 10 C. P. 102; Vale of Neath Colliery Co. v. Furness (1876), 45 L. J. Ch. 276; Cayley v. Walpole (1870), 39 L. J. Ch. 609.

(c) Holland v. Eyre (1825), 2 S. & S. 194. Cf. Clive v. Beaumont (1847), 1 De G. & S. 397; Lucas v. James (1849), 7 Hare, 410; Pattle v. Hornibrook, [1897] 1 Ch. at p. 31.

(d) Wilcox v. Redhead (1880), 49 L. J. Ch. 539. See Moritz v. Knowles (1899), W. N. 40, 83; 43 Sol. Journ. 529.

both parties.

contract was constituted (e). A letter, showing all the terms of the contract and signed by the defendant, may suffice, inasmuch as the Statute of Frauds requires the memorandum of agreement to be signed by the party to be charged only, and the bringing of the action is prima facie an acceptance by the plaintiff; but in such a case it is open to the defendant to prove that there was in fact no acceptance by the plaintiff at the time (f). An offer may be withdrawn at any time before it has been unequivocally accepted (g). But a person who has made an offer must be considered as continuously making it, until he has brought to the knowledge of the person to whom it was made that it is withdrawn (h). And, as regards acceptance, where the circumstances are such that it must have been within the contemplation of the parties that, according to the ordinary usages of mankind, the post might be used as a means of communicating the acceptance of an offer, the acceptance is complete as soon as it is posted (i).

Reference to a formal agreement. If, on a treaty for a lease, the fact is established of the final mutual assent of the parties to all essential terms, and those terms are evidenced by some writing signed by the party to be charged or his authorized agent, there exist all the materials of a concluded contract; and in such a case the Court will generally enforce it, notwithstanding that the writing may contain a provision that the terms are to be embodied in a formal instrument of agreement (k). It was held in a modern case that a binding contract had been constituted where the defendant, the owner of a public-house, had offered, by letter, to the plaintiff a lease of the house, stipulating for "a proper lease to be drawn up with all proper clauses, and approved of by me and my solicitor," and the plaintiff had replied, simply accepting the offer (l). And,

(f) Boys v. Ayerst (1822), 6 Madd. 316.

(h) Henthorn v. Fraser, [1892] 2 Ch.

(i) Henthorn v. Fraser, supra, at p. 33. The same principle applies to the posting of a notice of the exercise of an option: Bruner v. Moore, [1904] 1 Ch. 305, 316.

(k) Chinnock v. Marchioness of Ely (1865), 4 D. J. & S. at p. 646; Rossiter v. Miller (1878), 3 App. Cas. 1124, 1138; Ridgway v. Wharton (1857), 6 H. L. C. 238; Crossley v. Maycock (1874), 18 Eq. p. 181; Bolton Purtners v. Lambert (1889), 41 Ch. D. 295; Cook v. Williams (1897), 13 T. L. R. 481. See, too, North v. Perciral. [1898] 2 Ch. 128; and Filby v. Hounsel, [1896] 2 Ch. 737.

(1) Eadie v. Addison (1882), 31

W. R. 320.

⁽e) Jolliffe v. Blumberg (1870), 18 W. R. 784; Cf. Cavaleiro v. Puget (1865), 4 F. & F. 537.

⁽g) Warner v. Willington (1856), 3 Drew. 523.

again, where the defendant had written offering to take a lease of some houses, "such lease to be approved in the customary way by my solicitor," and the plaintiff had accepted the offer, a binding contract was held to have been constituted, the above-quoted stipulation merely meaning that the defendant was to be entitled to be protected by his solicitor against the insertion in the lease of anything irregular or unusual (m). Where, however, there was a written agreement to take a lease of a house, but the agreement was expressed to be "made subject to the preparation and approval of a formal contract," there was held to be no final agreement (n).

(2) REQUISITES FOR ENFORCEMENT OF CONTRACT.

Speaking generally, an action upon a contract to grant or to accept a lease cannot be maintained, unless the contract has been (i) embodied in writing and signed by the party to be charged or his agent, or (ii) partly performed (o).

(i) Memorandum in Writing under the Statute of Frauds.

Sect. 4 of the Statute of Frauds provides that no action shall be brought whereby to charge any person "upon any contract or sale of lands, tenements, or hereditaments, or any interest in or concerning them" (p), "unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized."

This section does not render contracts void, still less illegal; but it regulates procedure, and relates to the kind of proof required in this country to enable a plaintiff suing here to establish his

29 Car. 2, c. 3, s. 4.

Agreements for leases of lands, &c., or some memorandum thereof, must be in writing, and signed by the party to be charged

therewith.

(m) Chipperfield v. Carter, (1895) 72 L. T. 487.

(o) A case may be taken out of the Statute of Frauds not only by part performance, but also (i) by actual fraud on the part of one of the

parties; (ii) by the defendant's express or implied admission of the contract in or by his defence; or (iii) where, in case of a sale, the property has been sold by the Court: Fry on Spec. Perf., 4th ed. 249. For the purposes of this treatise, however, part performance is conceived to be the only exception from the statute which it is practically necessary to discuss.

(p) That an agreement for a lease is a contract within this section, see judgment of Littledale, J., in *Evens* v. *Roberts* (1826), 5 B. & C. at p. 839.

⁽n) Winn v. Bull (1877), 7 Ch. D. 29; Harrey v. Barnard's Inn (1881), 50 L. J. Ch. 750; Honeyman v. Marryatt (1855), 21 Beav. 14; Ball v. Bridges (1874), 22 W. R. 552; Hamksworth v. Chaffey (1886), 55 L. J. Ch. 335; Page v. Norfolk (1894), 70 L. T. 23. Distinguish Lloyd v. Nowell, [1895] 2 Ch. 744.

case here (q). An agreement for the letting of furnished lodgings is an agreement relating to an interest in land within the section (r), but not an agreement for board and lodging which does not give the right to the exclusive use of any part of the house (s). An agreement for abatement of rent is within the section (t), though it may be void for want of consideration (u); and so is an agreement for a lease of an incorporeal right, such as a right of shooting, which confers an interest in land and is not a mere licence (x). Where the tenant enters under a parol agreement, but does not occupy for the whole of the term, he is nevertheless liable in an action for use and occupation for the rent for the entire term (y).

Agreement partly relating to land.

Where an agreement by parol relating to an interest in land, which ought to be in writing, is accompanied by another parol agreement which would not by itself require to be in writing, and the two form part of one agreement, the whole must be in writing; as where upon an agreement for letting a house and furniture the lessor agrees to send in additional furniture (z), or where, in connection with an agreement to let a house, the lessor agrees to sell fixtures and to make improvements (a).

Parol variations.

So where there is a written agreement part of which relates to the letting of land, the whole is subject to the statute, and a parol variation of any part is inadmissible (b). And where there was a written agreement for a lease upon terms, and the lease was granted under a new agreement varying by parol from the

- (q) See per Lindley, L.J., in Roche-foucauld v. Boustead, [1897] 1 Ch. 196, at p. 207; and per Lord Black-burn in Maddison v. Alderson (1883), 8 App. Cas. at p. 488. As to agreements excepted from the statute on the ground of fraud, see supra, p. 105, note (o); also note to Pym v. Blackburn (1796), 3 Ves. at p. 38; and Whitchurch v. Bevis (1789), 2 Bro. C. C., 5th ed., at p. 563.
- (r) Inman v. Stamp (1815), 1 Stark. 12; Edge v. Strafford (1831), 1 Cr. & J. 391.
- (s) Wright v. Stavert (1860), 2 E. & E. 721.
- (t) O'Connor v. Spaight (1804), 1 Sch. & Lef. 305.
- (u) See Fitzgerald v. Lord Porturlington (1835), 1 Jones' Ex. R. (Ir.) 431.

(x) Webber v. Lee (1882), 9 Q. B. D. 315. As to enforcing a parol agreement for such a right on the ground of part performance, see McManus v. Cooke (1887), 35 Ch. D. 681.

(y) Smallwood v. Sheppards, [1895] 2 Q. B. 627.

- (z) Mechelen v. Wallace (1837), 7 A. & E. 49.
- (a) Vaughan v. Hancock (1846), 3 C. B. 766. But such an agreement may in some cases be held to be collateral to the agreement for letting, and therefore not required to be in writing; see Angell v. Duke (1875), L. R. 10 Q. B. p. 178; Erskine v. Adeane (1873), L. R. 8 Ch. 756; infra, p. 129.
- (b) Harrey v. Grabham (1836), 5 A. & E. 61.

written agreement, the new agreement was held not to be enforceable (c).

But a parol agreement which is purely collateral to the agree- Collateral ment for a lease is enforceable, if not itself within the Statute of Frauds (d).

agreement.

It is not necessary that the memorandum or note should be The memocontemporaneous with the making of the agreement (e), but the agreement must be complete when the memorandum is made (f), and the memorandum must be made and signed before the commencement of the action brought upon the agreement (g).

randum.

Although the memorandum must contain more than a mere proposal for a tenancy (h), yet it need not have the character of a written contract between the parties, or be delivered to the person who is to have the remedy upon it (i). A note or letter written by the lessor to his agent, specifying the essential terms, and containing directions to carry the agreement into execution, is sufficient to bind the lessor (k).

And the memorandum need not be contained in a single paper: Several the paper which is signed by the party to be charged may be taken in connection with another to which it clearly refers (l); and sometimes parol evidence has been admitted of circumstances connecting the two documents (m). Thus an envelope and a letter which is proved by parol evidence to have been inclosed in it can be taken together, so that the name of one of the parties may be supplied from the envelope (n). Where a note of the terms of a contract has to be made out from letters, the whole of the correspondence which has passed must be taken into account, and the Court will not stop at the first two letters, although

⁽c) Sanderson v. Graves (1875), L. R. 10 Ex. 234.

⁽d) Infra, p. 129.

⁽e) Per Lord Ellenborough, C.J., m Shippey v. Derrison (1805), 5 Esp. p. 193.

⁽f) Munday ∇ . Asprey (1880), 13 Ch. D. 855.

⁽g) Lucas \forall . Dixon (1889), 22 Q. B. D. 301; Re Holland, [1902] 2 Ch. 360, 382, 383, 386.

⁽h) Clarke ∇ . Fuller (1864), 16 C. B. N. S. 24; Forster v. Rowland (1861), 7 H. & N. 103. See Doe v. Cartwright (1820), 3 B. & A. 326.

⁽i) See judgment of Willes, J., in Gibson v. Holland (1865), L. R. 1

C. P. 1, p. 8.

⁽k) Gibson v. Holland, supra; Sugden, V. & P., 14th ed. 139. See Clerk v. Wright (1737), 1 Atk. 12; Welford v. Beuzely (1747), 3 Atk. 503.

⁽¹⁾ Ridgway v. Wharton (1857), 6 H. L. C. 238. Cf. Clinan v. Cooke (1802), 1 Sch. & Lef. 22; Potter v. Peters (1895), 72 L. T. 624; Wylson v. Dunn (1887), 34 Ch. D. 569.

⁽m) Oliver v. Hunting (1890), 44 Ch. D. 205; Baumann v. James (1868), 3 Ch. 508; Long v. Millar (1879), 4 C. P. D. 450.

⁽n) Pearce v. Gardner, [1897] 1 Q. B. 688.

appearing to form a complete contract, if it appears from subsequent letters that there were terms which were then, and which remained, unsettled (o). Still, when once a complete contract by correspondence has been arrived at, it is conceived that subsequent negotiations by letter on new points cannot affect the concluded contract, unless they go so far as to amount to the rescission of that contract, or the substitution of a new one (p). In deciding whether letters form a sufficient memorandum of a contract the principle already noticed must be borne in mind, that the terms offered by one party must in the result be unconditionally and unequivocally accepted by the other party (q).

Contents of the memorandum. The memorandum must either state all the essential terms of the contract (r) or refer to some document from which they may be ascertained (s). In the case of an agreement for a lease, the terms so to be stated, expressly or by reference, are (1) the subjectmatter, describing with certainty the premises to be demised (t); (2) the commencement (u) and duration (x) of the term; (3) the amount of the fine (if any) or other consideration (y), and of the rent (z); and (4) the names of both the parties to the agreement (a), or at least a description by which they can be identified.

(o) Hussey v. Horne-Payne (1879), 4 App. Cas. 311; Bristol, &c., Bread Co. v. Maygs (1890), 44 Ch. D. 616. See Bolton Partners v. Lambert (1889), 41 Ch. D. 295, 306.

(p) See Bellamy v. Debenham (1890), 45 Ch. D. 481; [1891] 1 Ch. 412; Fry on Spec. Perf., 4th ed., p. 246.

(q) Supra, p. 103.

(r) Williams v. Lake (1859), 2 E. & E. 349, 354. See Jackson v. Oylander (1865), 2 Hem. & M. 465; Baumann v. James (1868), 3 Ch. 508; Clarke v. Fuller (1864), 16 C. B. N. S. 24.

(s) See Cave v. Hastings (1881), 7 Q. B. D. 125; Baumann v. James.

(t) Lancaster v. De Trafford (1862), 31 L. J. Ch. 554.

(u) Blore v. Sutton (1817), 3 Mer. 237; Clarke v. Fuller (1864), 16 C. B. N. S. 24; Nesham v. Selby (1872), L. R. 7 Ch. 406; Cartwright v. Miller (1877), 36 L. T. 398; Marshall v. Berridge (1881), 19 Ch. D. 233.

(x) Clinan v. Cooke (1802), 1 Sch. & Lef. 22; Fitzmaurice v. Bayley (1857), 8 E. & B. 664; Gordon v. Trevelyan

(1814), 1 Price, 64; Cox v. Middleton (1854), 2 Drew, 209; Dolling v. Evans (1867), 36 L. J. Ch. 474. See Kensington v. Phillips (1817), 5 Dow, 61. As to an agreement to let property so long as it remains in the lessor's hands, see Edwardes' Menu Co. v. Chudleigh (1897), 14 T. L. R. 47, 64.

(y) Wain v. Warlters (1804), 5 East, 10; Saunders v. Wakefield (1821), 4 B. & A. 595.

(z) Baumann v. James (1868), J. R. 3 Ch. 508.

(a) Williams v. Lake (1859), 2 E. & E. 349. See judgment in Warner v. Willington (1856), 3 Drew. p. 530; Williams v. Jordan (1877), 6 Ch. D. 517; Stokell v. Niven (1889), 61 L.T. 18. It is sufficient if the writing shows who the contracting parties are, although they or one of them may be agents or agent for others, and it makes no difference whether you can gather the fact of agency from the writing or not. Who the principals are may be proved by parol: Filby v. Hounsel, [1896] 2 Ch. 737, 740.

The word "vendor" (b) is not a sufficient description, nor, probably, The parties. is "landlord" (c); but "proprietor" or "mortgagee" is (d).

In a recent case (e), the written memorandum did not contain the name of the intended lessee, but referred to him as the person who had that day paid to the landlord a sum of 50l. (which had been verbally agreed upon as a fine to be paid by the lessee); and it was held that, for the purposes of the Statute of Frauds, the lessee was sufficiently described in the memorandum.

The premises to be demised need not be exactly described: it The premises. is enough if they are so described as to be capable of identification by the aid of extrinsic evidence, including parol evidence (f).

The following descriptions in agreements for leases have been held to be sufficient when explained by parol evidence:—"This place" (g); "the property in Cable Street" (h); "Mr. Ogilvie's house" (i); "the mill property, including cottages in Esher Village" (k); "land at Forest Gate" (l).

In Jaques v. Millar (m) it was held that, if there was nothing Commenceto show that the term was not to commence at the date of the agreement, that date might be inferred to be the commencement; but that decision was overruled by the Court of Appeal (n), and it is settled that either the date of commencement must be expressly fixed, or there must be matters or circumstances stated from which the date of commencement can be ascertained (o).

ment of the

(b) Potter v. Duffield (1874), L. R. 18 Eq. 4.

(c) Coombs v. Wilks, [1891] 3 Ch.

(d) Rossiter v. Miller (1878), 3 App. Cas. 1124; Sale v. Lumbert (1874), 18 Eq. 1; cf. Jarrett ∇ . Hunter (1886). 34 Ch. D. 182; Pattle v. Anstruther, [1893] 69 L. T. 175.

(e) Carr v. Lynch, [1900] 1 Ch. 613. (f) Ogilvie ∇ . Foljambe (1817), 3 Mer. 53; Shardlow v. Cotterell (1881), 20 Ch. D. 90; Plant v. Bourne, [1897] ² Ch. 281; North v. Percival, [1898] ² Ch. 128. See, too, Shears v. Thimbleby & Son (1897), 13 T. L. R. 451, judgment of Chitty, L.J., p. 453. As to subsequent ascertainment of the premises, see Jenkins v. Green (No. 1) (1858), 27 Beav. 437, where an agreement for a lease of defined glebe land "except 37 acres" was good, since the choice of the part to be excepted lay with the lessee; and Hayward v. Cope (1858), 25 Beav.

140, where the extent of specified seams of coal was left to be subsequently defined.

(g) Waldron v. Jacob (1870), Ir. R. 5 Eq. 131.

(h) Bleakley v. Smith (1840), 11 Sim. 150.

(i) Ogilvie v. Foljambe (1817), 3 Mer. p. 61.

(k) McMurray v. Spicer (1868), L. R. 5 Eq. 527.

(1) Wesley v. Walker (1878), 26 W. R. 368.

(m) (1877), 6 Ch. D. 153.

(n) Marshall v. Berridge (1881), 19 Ch. D. 233. See Rock Portland Cement Co. v. Wilson (1882), 52 L. J. Ch. 214; Humphery v. Conybeare (1899), 80 L. T. 40.

(o) Phelan v. Tedcastle (1885), 15 L. R. (Ir.) 169; Re Lander and Bugley's Contract, [1892] 3 Ch. 41. See Verlander v. Codd (1823), T. & R. 352; Wood v. Aylward (1887), 58 L. T. 662.

Thus, if the rent is made payable from a certain date, the term may be inferred to begin at that date (p), or, if possession is to be given on payment of a sum of money, the term may be inferred to begin from the date of payment (q). And if the date has been agreed at the time of the contract, it may be ascertained from subsequent correspondence (r).

Signature.

The Statute of Frauds is satisfied if the agreement is signed only by the party to be charged (s); and the signature need not be at the foot of the instrument. It must be introduced in such a manner as to authenticate the instrument (t), and for this purpose the insertion of the name in the body of the instrument may be effectual, as where the party writes in his own hand "Mr. A. B. has agreed," &c. (u). But there must be a signature of the name; a description by which the writer could be identified is not enough (v). Where all the partners in a firm have acted in the firm's business, signature in the name of the firm is sufficient, although there is no evidence as to who signed (x).

By agent.

An agent to contract for the letting of land under the Statute of Frauds need not be authorized in writing (y); but he must be appointed for the special purpose of contracting; and where a solicitor, authorized to prepare a draft contract, forwarded the draft to the other side with a note referring to the sale, it was held that the statute was not satisfied (z). Signature by the agent's clerk is not sufficient (a). A resolution of a board of directors of a company, signed by the chairman, and adopting a draft agreement, satisfies the statute (b). A bare entry by a steward, in his lord's contract book, of an arrangement with one of the lord's tenants for a new lease, was held, in an old case (c),

⁽p) Wesley v. Walker (1878), 26 W. R. 368.

⁽q) Erskine v. Armstrong (1887), 20 L. R. (Ir.) 296.

⁽r) White v. Hay (1897), 72 L. T. 281.

⁽s) Seton v. Slade (1802), 7 Ves. 265; Fowle v. Freeman (1804), 9 Ves. 351; Laythoarp v. Bryant (1836), 2 Bing. N. C. 735.

⁽t) Ogilvie v. Foljambe (1817), 3 Mer. 53.

⁽u) Propert v. Parker (1830), 1 Russ. & M. 625; Bleakley v. Smith (1840), 11 Sim. 150. Cf. Stokes v. Moore (1786), 1 Cox, 219.

⁽v) Selby v. Selby (1817), 3 Mer. 2. (x) Evans v. Curtis (1826), 2 C. & P. 296.

⁽y) Clinan v. Cooke (1802), 1 Sch. & Lef. 22; Heard v. Pilley (1869), 4 Ch. 548. Cf., as to authority of auctioneer, Emmerson v. Heelis (1809), 2 Taunt. p. 48.

⁽z) Smith v. Webster (1876), 3 Ch. D. 49.

⁽a) Potter v. Peters (1895), 72 L. T. 624.

⁽b) Jones v. Victoria Graving Dock Co. (1877), 2 Q. B. D. 314.

⁽c) Charlewood v. Duke of Bedford (1738), 1 Atk. 497.

not to be sufficient evidence of an agreement between the lord and the tenant.

An agreement may, like a deed, be made as an escrow, and, Escrow. although the lessor has signed it, he will not be bound if a condition, upon which the entering into the agreement is dependent, is not fulfilled (d).

(ii) Part Performance.

Specific performance will be enforced (e) of parol agreements Parol for leases of any interest in land when such agreements have been partly performed (f), provided the following requisites exist:—(i) The agreement must be certain and definite in its terms (g), complete (h), and final (i), and also of such a nature that, if it had been in writing, the Court would have had jurisdiction to enforce it specifically (k). (ii) It must have been made by a person having power to grant the lease (l). A parol agreement by a tenant for life with power of leasing will not be enforced against the remainderman on the ground of part performance in the lifetime of the tenant for life only (m). (iii) It must either be admitted or be clearly proved (n).

The Court is bound to consider, first, whether there was a parol agreement of such a nature as to be specifically enforceable; secondly, if so, whether there has been part performance of it: and then, if there has been part performance, it is the duty of the Court to act upon the established principle, and to decree performance of the contract (o).

(d) Pattle v. Hornibrook, [1897] 1 Ch. 25.

(e) County Courts have jurisdiction to enforce specific performance where the value of the property does not exceed 5001.: County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 67 (4).

(f) Lester v. Foxcroft (1701), Colles, P. C. 108; 2 Wh. & Tud. L. C.

7th ed. p. 460.

(g) Cooth v. Jackson (1861), 6 Ves.

p. 38.

(h) See Thynne ∇ . Glengall (1848), 2 H. L. Cas. 131, 158; Richards v. North London Ry. Co. (1871), 20 W. R. 194; Bretel v. Neveux (1878), 39 L. T. 257; Faulkner v. Llewellin (1862), 31 L. J. Ch. 549; Price v. Salusbury (1863), 32 Beav. p. 459; Phillips v. Alderton (1875), 24 W. R. 8. (i) Supra, p. 102.

(k) See Fry on Spec. Perf., 4th ed. p. 256.

(l) See Phillips v. Edwards (1864), 33 Beav. 440.

(m) Trotman v. Flesher (1861), 3 Giff. 1; and see supra, p. 55.

(n) Mortal v. Lyons (1858), 8 Ir. Ch. Rep. 112. See Pilling v. Armitage (1806), 12 Ves. 78; Reynolds v. Waring (1831), 1 Yo. 346; Morphett v. Jones (1818), 1 Swanst. 172. If a parol agreement is admitted by the defendant, and he does not insist on the statute, the Court will decree specific performance: Gunter v. Halsey (1739), 2 Amb. 586.

(o) Per Lord Cranworth, L.C., in Nunn v. Fabian (1865), L. R. 1 Ch. 35, at p. 39. The doctrine of part

agreement,

Acts of part performance.

To operate as a part performance, an act must have been done unequivocally, referable to some such agreement as the agreement alleged, and consistent with that agreement (p); of such a nature, indeed, that, if stated, it would of itself imply the existence of some agreement; and then parol evidence is admitted to show what the agreement was (q). The following circumstances have been held to amount to part performance:-

Entry into possession and expenditure.

(i) Where, under a parol agreement for a lease, and with distinct reference to such agreement, a person has entered into possession of property (r); and especially where, in pursuance of the agreement, he has expended money in improvements (s), with the acquiescence of the landlord (t).

Payment of rent at increased rate.

(ii) Where, under a parol agreement by a landlord to grant to a tenant in possession a lease for a term of years at an increased rent, the tenant has paid rent at the increased rate (u). But payment of rent in advance by a person who has verbally agreed to take a lease, but has not gone into possession, is not an act of part performance sufficient to take the case out of the statute (x).

Expenditure in pursuance of parol agreement.

(iii) Where a person who is already in possession of property as tenant expends money in alterations in pursuance of a parol agreement for a new lease (y), the alterations being such as he

performance is not confined to questions relating to land: Maddison v. Alderson (1883), 8 App. Cas. p. 474; McManus v. Cooke (1887), 35 Ch. D. pp. 690, 691. Cf. Britain v. Rossiter (1879), 11 Q. B. D. 123; Fry on Spec. Perf., 4th ed. p. 262.

(p) Ex parte Hooper (1815), 19 Ves. p. 479; Morphett v. Jones (1818), 1 Swanst. p. 181; Maddison v. Alderson, ubi supra, at p. 479.

(q) Per Grant, M.R., in Frame v. Dawson (1807), 14 Ves. p. 387.

(r) Morphett ∇ . Jones (1818), 1 Swanst. 172; Pain v. Coombs (1857), 1 De G. & J. 34. See Whitbread v. Brockhurst (1784), 1 Br. C. C. p. 409, and Cole v. White, there cited; Wills v. Stradling (1797), 3 Ves. p. 381; Boardman v. Mostyn (1801), 6 Ves. p. 470; Kine v. Balfe (1813), 2 Ball & B. 343, 348; Wilson v. W. Hartlepool Ry. Co. (1864), 2 D. J. & S. p. 485. Cf. Tofield v. Roberts (1904), 10 T. L. R. 437.

(8) Gregory v. Mighell (1811), 18 Ves. 328; Mundy v. Jolliffe (1839), 5 My. & C. 167; Farrall v. Davenport (1861), 3 Giff. 363; Reddin v. Jarman (1867), 16 L. T. 449. See Surcome v. Pinniger (1853), 3 D. M. & G. 571; Shillibeer v. Jarvis (1856), 8 D. M. & G. 79; Phillips v. Alderton (1875), 24 W. R. 8.

(t) See Dann v. Spurrier (1802), 7 Ves. p. 236; Ramsden v. Dyson (1866), L. R. 1 H. L. 129; Plimmer v. Mayor, &c. of Wellington (1884), 9 App. Cas. 699; Civil Service &c. Assoc. v. Whiteman (1899), 68 L. J. Ch. 484.

(u) Nunn v. Fabian (1865), L. R. 1 Ch. 35; Williams v. Evans (1875), L. R. 19 Eq. p. 557; Connor v. Fitzgerald (1883), 11 L. R. (Ir.) 106; Humphreys v. Green (1882), 10 Q. B. D. 148, 156; Miller and Aldworth v. Sharp, [1899] 1 Ch. 622; but see per Brett, L.J., in Humphreys v. Green, at p. 160. See Wills v. Stradling (1797), 3 Ves. 378, 382.

(x) Thursby ∇ . Eccles (1900), 70

L. J. Q. B. 91.

(y) Sutherland \mathbf{v} . Briggs (1841), 1 Hare, 26. See Wills v. Stradling, supra.

would not have been liable to make if there had been no agreement (z). And it is the same if the expenditure is made by a sublessee of the tenant with the knowledge and approval of the landlord (a). But the making of alterations by the intended landlord is not a sufficient part performance to take the case out of the statute (b).

(iv) Ordinarily the retention of possession by a tenant is not in itself a sufficient part performance of a parol agreement (c); but under special circumstances it may have this effect, as mere retenwhere it is referable only to a contract for renewal (d), or where, possession. possession having been taken before a parol contract for a lease, the continuance of possession after the contract is unequivocally referable to the contract (e).

4. Under special circumstances, tion of

(3) RIGHTS OF INTENDED LESSEE.

By agreeing to grant a lease the intended lessor impliedly Right to undertakes that he has title to grant it; and if he has not such title at the time when the lease ought to be granted (f), he is liable to an action at the suit of the intended lessee (g). A lessee is a purchaser pro tanto, and, apart from statutory restriction, is entitled to call upon the lessor for an inspection of his title (h).

It is provided, however, by the Vendor and Purchaser Act, Statutory 1874 (i), that, subject to any stipulation to the contrary in the contract, under a contract to grant a term of years, whether to be derived out of a freehold or leasehold estate, the intended lessee shall not be entitled to call for the title to the freehold (k).

production of lessor's title.

restrictions on right.

(2) See Frame v. Dawson (1807), 14

(a) Williams v. Evans (1875), L. R. 19 Eq. 547.

(b) Whittick **v.** Mozley (1883), C. &

(c) Wills v. Stradling (1797), 3 Ves. pp. 381, 382; Brennan v. Bolton (1842), 2 Dr. & War. 349; per Baggallay, L.J., in Alderson v. Maddison (1881), 7 Q. B. D. p. 178; Re National Sarings Bank Association, Brady's Case (1867), 15 W. R. 753.

(d) Dowell v. Dew (1842), 1 Y. &

U. C. C. 345.

(e) Hodson v. Heuland, [1896] 2 Ch. 428. See, too, White v. Whitewood (1897), 13 T. L. R. 409.

(f) De Medina v. Norman (1842), 9 M. & W. 820. Cf. Reeves v. Gill (1838), 1 Beav. 375.

(g) Stranks v. St. John (1867), L. R. 2 C. P. 376; Hoare v. Chambers (1895), 11 T. L. R. 185; Roper v. Coombes (1827), 6 B. & C. 534; (fwillim v. Stone (1811), 3 Taunt. 433 (the marginal note to this case is incorrect); explained in Stranks v. St. John, loc. cit. p. 379. See Temple v. Brown (1815), 6 Taunt. 60; Fildes v. Hooker (1817), 2 Mer. p. 427; and as to an agreement for an underlease, see Jackson v. Corbin (1841), 8 M. & W. 790.

(h) Sug. V. & P. 14th ed. 367, note; Keech v. Hall (1778), 1 Dougl. 21; Purvis v. Rayer (1821), 9 Price, 488.

(i) 37 & 38 Vict. c. 78.

(k) Sect. 2. See Jones v. Watts

It has also been enacted by the Conveyancing Act, 1881 (l), that "on a contract to grant a lease for a term of years to be derived out of a leasehold interest, with a leasehold reversion, the intended lessee shall not have the right to call for the title to that reversion" (m). But the last-mentioned enactment applies only if and as far as a contrary intention is not expressed in the contract, and it has effect subject to the terms of the contract (n).

The result of these two enactments is that, subject to stipulation to the contrary, an intending lessee can in no case call for the title to the freehold, and, if he is about to take a lease from an intending lessor who himself holds by underlease, he cannot call for the title to the headlease; but an intending lessor, who holds by lease, whether original or derivative, must show his own lease and deduce the title thereto. These rules do not prevent the lessee from having constructive notice of his lessor's title, and in this respect he is in the same position as he would have been in before the Act, had he stipulated not to inquire into the title (o). He is not assisted by sect. 3 of the Conveyancing Act, 1882 (p). Hence, where it is important to see the lessor's title, the above rules must be expressly or impliedly excluded. The rule as to calling for the title to the freehold is excluded by an agreement by the freeholder to deliver an abstract of his title to the intending lessee (q).

Covenants.

If an agreement for a lease contains no stipulations as to covenants, the person agreeing to take the lease has a right to a lease containing only usual covenants (r).

Underlease.

An intending underlessee should examine the headlesse and see that the proposed sub-term can be validly granted. If the sub-term agreed for exceeds the length of the residue of the head-term, the underlessee cannot, after the underlesse has been actually granted, recover compensation (s), except by virtue of

 $(p)^{-}45 \& 46 \text{ Vict. c. } 39.$

(q) Re Pursell and Deakin's Contract (1893), W. N. 152.

(s) Besley v. Besley (1878), 9 Ch. D. 103; Clayton v. Leech (1889), 41 Ch. D. 103.

^{(1890), 43} Ch. D. 574, where it was held that an agreement for a right of way during a lease was an agreement for a lease of land within the meaning of the Act.

^{(1) 44 &}amp; 45 Vict. c. 41, s. 13 (1). (m) Consider Gosling v. Woolf,

^{[1893] 1} Q. B. at p. 40.

 ⁽n) Sect. 13 (2).
 (o) Patman v. Harland (1881), 17
 Ch. I). 353, 358; Mogridge v. Clapp,

^{[1892] 3} Ch. 382, 397.

⁽r) Propert v. Parker (1832), 3 My. & K. 280. As to what covenants are "usual," see infra, p. 154.

an express compensation clause (t). A sublessor, who has covenanted to do his utmost to procure a renewal of his own lease, must pay any reasonable sum which is exacted as a condition of renewal, or he will commit a breach of the covenant (u).

Where a lessee who is prohibited from subletting without consent agrees to underlet, the intending underlessee can, upon becoming aware of the prohibition, repudiate at once, and is not bound to wait and see if the consent of the lessor can be obtained; unless, indeed, at the time of repudiation the necessary consent has been already obtained (x).

(4) REMEDIES FOR BREACH OF AGREEMENT.

The common law remedy for breach of an agreement to grant, 1. Action for or to accept, a lease is an action for damages. Where, however, a person who has contracted to grant a lease fails to carry out his contract in consequence of a defect in his title, he is not, generally, liable for damages consequential on the intending lessee's loss of his contract, even though the defect was known to the lessor at the time when he entered into the contract (y). The rule in this respect applicable to sales of real estate applies also to leases (z). But if the intending lessor can grant the lease, either by force of his own title, or by force of the interest of others whom he can compel to join in the lease, and wilfully fails to carry out his contract, he is liable to an action for damages (a). And in any case the intending lessee can recover back a sum he may have paid as premium (b), or in repairing

damages.

(b) See Wright v. Colls (1849), 8

C. B. 150.

⁽t) Palmer v. Johnson (1884), 13 Q. B. D. 351.

⁽u) Simpson v. Clayton (1838), 4 Bing. N. C. 758.

⁽r) Forrer v. Nash (1865), 35 Beav. 167. And as to agreements for under-leases, see infra, Chap. IV., sect. xiii. (3).

⁽y) Bain v. Fothergill (1874), L. R. H. L. 158, affirming Flureau v. Thornhill (1776), 2 W. Bl. 1078, and overruling Hopkins v. Grazebrook 1826), 6 B. & C. 31, and, apparently, Robinson v. Harman (1848), 1 Ex. 850. See article in 27 Sol. Journ. 742

⁽z) Gas Light and Coke Co. v. Towse (1887), 35 Ch. D. p. 543; Hyam v. Terry (1881), 25 Sol. Journ. 371.

^{• (}a) Ward v. Smith (1822), 11 Price, 19; Jaques v. Millar (1877), 6 Ch. D. 153. Cf. Day v. Singleton, [1899] 2 Ch. 320, 327, where it was held that a purchaser of leasehold property, which the vendor cannot assign without a licence from his lessor, is entitled to damages (beyond the return of his deposit with interest and expenses) for loss of his bargain by reason of the vendor's omission to do his best to procure the licence. Ordinarily, if an agreement is too uncertain for specific performance, it is too uncertain to give rise to a claim for damages: Wood v. Silcock (1884), 50 L. T. 251; but see Foster v. Wheeler (1888), 38 Ch. D. 130.

the premises (c), and the costs to which he has been put (although not yet actually paid (d)) in investigating the title and otherwise preparatory to the grant of the lease (e).

An intending lessor, who by his own conduct has debarred himself from granting a lease at an agreed future day, is considered as having committed a breach of his agreement, and is liable to be sued before that day arrives (f).

2. Specific performance.

Instead of bringing a common law action for damages, a person aggrieved by a breach of an agreement for a lease for years or life may bring an action in the Chancery Division of the High Court of Justice (g), or, if the value of the property does not exceed 500l., in a county court (h), for specific performance of the agreement; and, assuming that his own conduct has been irreproachable, he may generally count upon obtaining that relief, provided the agreement either is evidenced by a memorandum in writing, sufficient to satisfy the Statute of Frauds (i), or has been partly performed (k), and provided further that the plaintiff can satisfy the Court that the agreement is complete (l), mutual (m), certain (n) as to its substantial parts (o), and fair and just throughout (p). But the exercise of this jurisdiction is entirely in the discretion of the Court (p), and it will not in general decree specific performance of an agreement for a term which has already expired by effluxion of time (q), or where there

(c) Pulbrook v. Lawes (1876), 1 Q. B. D. 284; although there is no sufficient agreement in writing: Ib.

(d) Richardson v. Chasen (1847),

10 Q. B. 756.

(e) Hanslip v. Padwick (1850), 5 Ex. 615. See Dart's V. & P. 6th ed. p. 1076. As to action by intending lessor, see Collins v. Willmott (1864), 11 L. T. 340.

(f) Ford v. Tiley (1827), 6 B. & C.

325, 327.

(g) Judicature Act, 1873, s. 34; cf. Judicature Act, 1875, s. 11; and see R. S. C. Ord. 49.

(h) County Courts Act, 1888, s. 67.

(i) Supra, p. 105.

(k) Supra, p. 111.

(1) See Thynne v. Glengall (1848), 2 H. L. C. 131, 158.

(m) See infra, p. 117.

(n) See Price v. Griffith (1851), 1 D. M. & G. 80; Powell v. Lovegrove (1856), 8 D. M. & G. 357; Jeffery v. Stephens (1860), 8 W. R. 427; Oxford v. Provand (1868), L. R. 2 P. C. 136; Mayor of Oxford v. Crow (1893), 69 L. T. 228.

(a) Parker v. Taswell (1858), 2 De G. & J. 559. For an instance of a very informal agreement which was held by the Court of Appeal to be capable of being specifically enforced, see Zimbler v. Abrahams,

[1903] 1 K. B. 577.

(p) Per Lord Hardwicke, C., in Buxton v. Lister (1746), 3 Atk. p. 386. Where the intending lessor is entitled to only part of the property, specific performance may be ordered with an abatement of rent: Burrow v. Scammell (1881), 19 Ch. D. 175; McKenzie v. Hesketh (1877), 7 Ch. E. 675. A building agreement can be enforced separately as the various plots are built on: Wilkinson v. Clements (1872), L. R. 8 Ch. 96; Lowther v. Heaver (1889), 41 Ch. I. 248.

(q) See Walters v. Northern Coul

is evidence of insolvency, showing that the plaintiff is not in a position to perform the covenants contained in the lease (r). But an agreement to let even from year to year will, in a proper case, be specifically enforced (s). And so may an agreement for a lease of an undivided moiety of mineral property (t). agreement which is subject to a condition precedent will not be enforced till the condition is fulfilled (u). Where the condition involves the execution of repairs by the lessor, the lessee can resist specific performance on the ground of their non-execution, notwithstanding that he has taken possession (x), unless the delay amounts to acquiescence (x).

The completeness of the agreement is, as a general rule, to be Completejudged of at the time of the commencement of the action (y). must be complete in respect of parties, subject-matter, and all other essential terms; it must be completely evidenced; and it must also be complete in the sense that it is a concluded contract. These requisites have already been adverted to (z); and the bar arising from incompleteness may be further illustrated here by reference to a case (a) where an agreement by a tenant in possession for a new tenancy was held to be incomplete, and therefore unenforceable, because it failed to fix the date at which the new tenancy was to commence, and to another case (b) where there was a parol agreement for a lease for three lives, which was incomplete in that it neither named the lives, nor made any provision as to who should name them.

The Court will not, generally, adjudge specific performance of Mutuality. an agreement, unless, at the time when it was made, it was

Mining Co. (1855), 5 D. M. & G. (u) Abbot v. Blair (1860), 8 W. R. 629,638; De Brassac v. Martyn (1863), 11 W. R. 1020.

(7) Neale v. Mackenzie (1837), 1 Keen, 474, 485. As to ante-dating a lease made under a judgment for specific performance, see McIlroy v. Traill, [1898] 1 I. R. 459.

(s) Lever v. Koffler, [1901] 1 Ch. 543, 547, in which case Clayton v. Illingworth (1853), 10 Hare, 451, was considered and explained.

(t) Hexter v. Peurce, [1900] 1 Ch. 341, in which case Farwell, J., discussed and explained a seeming dictum to the contrary of Knight-Bruce, L.J., in Price v. Griffith, supra, and relied to some extent upon Burrow v. Scammell, supra.

672; Modlen v. Snowball (1861), 4 D. F. & J. 143; Williams v. Brisco (1882), 22 Ch. D. 441.

(x) Lamare v. Dixon (1873), L. R. 6 H. L. 414. As to the effect of delay, see Nush v. Cochrune (1839), 3 Jur. 973; Powis v. Lord Dynevor (1877), 35 L. T. 940; Shepheard v. Walker (1875), L. R. 20 Eq. 659; Huxham v. Llewellyn (1873), 21 W. R. 570, 766, and infra, p. 120.

(y) Fry on Spec. Perf. 4th ed.

p. 143.

(z) Supra, pp. 103, 105 et seq.

(a) Lord Ormond v. Anderson (1813), 2 Ball. & B. 363.

(b) Wheeler v. D'Esterre (1814), 2 Dow, 359.

mutual, that is to say, was an agreement which either of the parties might have enforced against the other party (c). Accordingly, an infant cannot enforce performance of an agreement for a lease, for it could not be enforced against him (d); a tenant in tail, not being bound by a contract entered into by a former tenant for life in excess of his powers, cannot enforce it (e); and a purchaser may repudiate a contract on discovering that, at the time of the contract, the vendor had no title (f). But the original want of mutuality may be waived by such a purchaser's subsequent conduct (f); and a party who has not signed a contract falling within the Statute of Frauds may enforce it against a party who has signed it, for by suing he makes the remedy mutual (d). Such a one-sided contract as a lessor's covenant to renew a lease at the request of the lessees (g) is really a conditional contract, which, upon the request being duly made, becomes absolute and mutual.

Certainty.

An agreement must, in order to be specifically enforced, be certain and defined (h). Where an intending lessee agreed to take a lease of a house if the house was put into thorough repair and the drawing-rooms "handsomely decorated according to the present style," it was held that the agreement was too uncertain for specific performance to be ordered (i); but the decision appears to be exceptional, and an agreement under which the lessor is to put the house in decorative repair (k), or under which the lessee is "to do all painting, papering, repairing, decorating, &c., during the term" (l), has been specifically enforced, with an inquiry in the former case whether the agreement as to repair had been performed (k). It is sufficient if the agreement is substantially certain. Where an intending tenant agreed to do certain specified works and "other works," the whole estimated to cost from 150l. to 2001., and the specified works would evidently nearly cost that sum, it was held that the fact of the "other works" being left

⁽c) Fry on Spec. Perf. 4th ed. p. 203.

⁽d) Flight v. Bolland (1828), 4 Russ. at p. 301; Lumley v. Ravenscroft, [1895] 1 Q. B. 683, 684.

⁽e) Ricketts v. Bell (1847), De G. & Sm. 335; supra, p. 56.

⁽f) Hoggart v. Scott (1830), 1 Russ. & M. 293, at p. 295.

⁽g) See Chesterman v. Mann (1851), 9 Ha. 206.

⁽h) See per Lord Loughborough in Lord Walpole v. Lord Orford (1797), 3 Ves. at p. 420; also Harnett v. Yeilding (1805), 2 Sch. & L. 549.

⁽i) Taylor v. Portington (1855), 7 D. M. & G. 328.

⁽k) Samuda v. Lawford (1862), 4 Giff. 42.

⁽¹⁾ Dear v. Verity (1869), 38 L. J. Ch. 297, aff. p. 486.

undefined was not a sufficient reason for refusing specific performance on the ground of uncertainty (m). But the Court will not order performance of a preliminary building agreement in which the details of the buildings are not defined (n). Where, however, there has been part performance, or any unfair dealing on the part of the party raising the objection of uncertainty, the Court will struggle to get over that objection (o).

Specific performance will not be granted of an agreement which Hardship and will involve great hardship (p) to either of the parties to it. Hence specific performance has been refused of an agreement to take a lease of a new house which the owner agreed to finish, but which was so defectively finished that it was likely to subject the tenant to an unreasonably large annual outlay in order to fulfil the provisions of the covenant to repair (q), but otherwise where the tenant voluntarily takes the house in a bad state of repair (r). If a forfeiture would result from a grant of the lease, the Court will not order specific performance, but will give the lessee com-The mere possibility, however, that a forfeiture pensation (s). will ensue is not enough (t). On grounds of hardship and unfairness, the Court will not enforce a performance involving a breach of trust, as, for instance, the ultra vires granting of a lease by a trustee (u).

Further, the party who comes for a specific performance must Plaintiff's come with perfect propriety of conduct (x).

Accordingly, where a contract has been induced by fraud or fraudulent misrepresentation, or even by an innocent but material misrepresentation, on the part of the plaintiff, or his agent, the Court will not enforce the contract (y).

(m) Baumann ∇ . James (1868), 3 Ch. 508.

(n) Wood v. Silcock (1884), 50 L. T. 251.

(0) See Oxford v. Provand (1868), L. R. 2 P. C. 135; Hart v. Hart (1881), 18 Ch. D. at p. 685; Chattock v. Muller (1878), I. R. 8 Ch. at p. 181.

(p) See the observations of Farwell, J., in Hexter v. Pearce, [1900] 1 Ch. at pp. 345, 346, and of Romer, 1.d., in Re Highett and Bird's Contrud, [1903] 1 Ch. at pp. 293, 294.

(y) Tildesley v. Clarkson (1862), 30

Beav. 419.

(7) Cook v. Waugh (1860), 2 Giff. 201.

(s) See Peacock v. Penson (1848), 11 Beav. 355. As to an agreement by a copyholder to grant leases for a longer period than is authorized by custom, see Paxton v. Newton (1854), 2 Sm. & Giff. 437, 440.

(t) See Fry on Spec. Perf. 4th ed. p. 188; Helling v. Lumley (1858), 3 De G. & J. 493.

(u) Harnett v. Yeilding (1805), 2 Sch. & L. 549; Tolson v. Sheard (1877), 5 Ch. D. 19.

(x) Per Lord Redesdale in Harnett v. Yeilding (1805), 2 Sch. & L. at p. 554.

(y) See, e.g., Mullens v. Miller (1882), 22 Ch. D. at p. 199; Fry on Spec. Perf. 4th ed., Part III., Chaps.

coudact.

Delay.

And delay on the part of the plaintiff may result in the refusal of specific performance (z); though it may be excused where he has been in possession under the contract sought to be enforced (a).

Mistake.

Again, a material mistake in connection with the contract may, if occasioned or contributed to by the plaintiff, or his agent, (b) be a good defence to an action for specific performance; and so may a common mistake of both parties with respect to the subject matter of the contract (c), or even a mistake due to the defendant or his agent only (d). But a misunderstanding by one of the parties of the legal effect of a contract is not a good defence (e).

Parol variation.

If the Court finds that a written contract has been entered into, and the plaintiff says: "That was agreed upon, but then there were other terms added, or certain variations made," the Court holds that, in such a case, the contract is not in the writing, but in the terms which are verbally stated to have been the agreement between the parties, and therefore refuses to perform such an agreement specifically. On the other hand, it is quite competent for the defendant to set up a parol variation of the written contract; and it will depend on the particular circumstances of each case whether that is to defeat the plaintiff's title to have a specific performance, or whether the Court will perform the contract, taking care that the subject matter of this parol agreement, or understanding, is also carried into effect, so that all parties may have the benefit of what they contracted for (f). Thus, where an intending lessee sought specific performance of a written agreement for a lease, on the face of which he was to pay only a certain yearly rent, the defendant (lessor)

xiv. and xv. The Statute of Frauds does not prevent the proof of a fraud: Rochefoucauld v. Boustead, [1897] 1 Ch. at p. 206.

(z) E.g., Levy v. Stogdon, $\lceil 1898 \rceil$ 1 Ch. 478; [1899] 1 Ch. 5. See, too, the cases cited supra, p. 117, note (x).

(a) Mills v. Haywood (1877), 6 Ch. D. 196, at p. 202; Clarke v. Moore (1844), 1 Jo. & Lat. at p. 727.

(b) E.g., Denny ∇ . Huncock (1870),

L. R. 6 Ch. 1.

(c) E.g., Cochrane v. Willis (1865), L. R. 1 Ch. 58. Cf. Scott v. Coulson, [1903] 1 Ch. at p. 455.

(d) E.g., Malins v. Freeman (1837),

2 Keen, 25, 34. (f. per Jessel, M.R., in Jones v. Rimmer (1880), 14 Ch. D. at p. 592. The various grounds of defence to an action for specific performance are discussed at length in Fry on Spec. Perf. 4th ed., Part III.

(e) Powell v. Smith (1872), L. R. 14 Eq. 85.

(f) Per Lord Cottenham in London and Birmingham Railway Co. v. Winter (1840), Cr. & Ph. 57, at p. 61. As to suing for rectification of a contract and specific performance of the contract as rectified. compare Olley v. Fisher (1886), 34 Ch. D. 367, with May v. Platt, [1900] 1 Ch. 616, at pp. 621, 622.

was allowed to prove a verbal agreement, omitted from the writing, that the plaintiff should pay the rent clear of taxes (g).

But parol evidence is not admissible to prove a subsequent agreement to vary the terms of a written contract, such as an agreement for a mining lease, which is by law required to be in writing, although it may be admitted to prove the rescission of such a contract (h).

Specific performance may be enforced against executors, provided this can be done without imposing upon them personal liability (i).

The bankruptcy of a person who has contracted to grant, or to accept, a lease does not, of itself, put an end to the contract. The trustee in bankruptcy may be willing to enter into the covenants which the bankrupt would have had to enter into; and in such a case specific performance of the contract may presumably be enforced (k). On the analogy of the authorities on cases between vendors and purchasers of leaseholds (1), it is conceived that, where a person who has contracted to grant a lease becomes bankrupt, the intended lessee may insist upon specific performance, if he be content to waive the insertion in the lease of any personal covenant on the part of the trustee; and that, where a person who has contracted to take a lease becomes bankrupt, the contract cannot be specifically enforced against his trustees without the latter's consent.

By Lord Cairns' Act (21 & 22 Vict. c. 27, s. 2), the Court of Damages in Chancery was empowered, where a plaintiff had a case for specific performance, to give him damages either in addition to or in substitution for specific performance (m). The Act has been repealed (n), but the jurisdiction conferred by it was not affected by the repeal (o), and is now vested in the High Court of

Specific performance against executors.

The effect of bankruptcy.

lieu of or in addition to specific performance.

(y) Joynes v. Statham (1746), 3Atk. 387. See, too, Williams v. Jones (1888), 36 W. R. 573, where evidence of a contemporaneous parol proviso, not contradicting, but explaining, a written agreement for a lease was admitted.

(h) Vezey v. Rashleigh, [1904] 1 Ch. 634, at p. 636.

(i) Phillips v. Everard (1831), 5 Sim. 102; Stephens v. Hotham (1855), 1 K. & J. 571. Cf. Page v. Broom (1810), 3 Beav. 36.

(k) Brooke v. Hewitt (1796), 3 Ves. at p. 255; Fry on Spec. Perf. 4th ed.

(1) Pearce v. Bastable's Trustee in Bankruptcy, [1901] 2 Ch. 122; Holloway v. York (1877), 25 W. R. 627.

(m) Lewers ∇ . E. of Shaftesbury (1866), 2 Eq. 270; Lavery v. Pursell (1888), 39 Ch. D. p. 519. See Proctor v. Bayley (1889), 42 Ch. D. 390; and as to lien of lessee for expenses and costs, see $Middleton \nabla$. Maynay (1864), 2 Hem. & M. 233.

(n) Stat. Law Rev. Act, 1883 (46 &

47 Vict. c. 49).

(a) Sayers v. Collier (1884), 28 Ch. D. 103.

Justice (p). Apart, however, from this special jurisdiction, the High Court has, under the Judicature Act, 1873(q), power to give all such remedies as any of the parties may be entitled to, and it may consequently award damages under this general power, even though no case for specific performance has been made out (r). These damages will be for breach of the contract, as though the action had been for damages in the first instance (s). Nowadays it is usual, in an action for specific performance, to claim damages also.

Specific performance distinguished from other specific relief.

It is to be borne in mind that the common expression "specific performance," as applied to actions known by that name, presupposes an executory agreement, such, for instance, as an agreement for a lease, as distinct from an executed agreement, such, for instance, as an indenture of lease (t). Accordingly, the remedy of specific performance, properly so called, must not be confused with that specific relief which the Court in many cases gives on executed contracts, as when, for instance, it indirectly enforces the observance in specie—according to its terms—of some covenant in a lease, by means of an injunction restraining acts in contravention of it (u).

(5) STAMPS.

Where necessary.

A written offer to let, assented to verbally, is admissible in evidence without being stamped (x). But, where a verbal proposal is accepted in writing, such acceptance must be stamped (y). A mere proposal can be given in evidence without a stamp (z).

- (p) See Judicature Act, 1873, ss. 16, 76. As to giving damages by virtue of the special jurisdiction conferred by Lord Cairns' Act, see White v. Boby (1877), 26 W. R. 133.
- (q) See sect. 24 (7), also sect. 16. (r) Elmore v. Pirie (1887), 57 L. T. 333; Tamplin v. James (1880), 15
- Ch. D. p. 222.

 (s) See Rock Portland Coment Co.
 v. Wilson (1882), 52 L. J. Ch. 214;
 Re Northumberland Avenue Hotel Co.
 (1885), 54 L. T. 76.
- (t) See per Lord Selborne in Wolverhampton, &c., Railway Co. v. London & North Western Railway Co. (1873), L. R. 16 Eq. 433, at p. 439.
- (u) See Lane v. Newdigate (1804), 10 Ves. 192; Rigby v. Great Western

- Railway (v. (1846), 15 L. J. Ch. 266, 271, 2 Ph. 44; and Fry on Spec. Perf. 4th ed. p. 363. Cf. Frogley v. Earl of Lovelace (1859), Johns. 333, where a landlord was restrained by injunction from interfering with his tenant's exercise of sporting rights pursuant to an agreement not under seal, pending the execution of a legal grant of those rights.
- (x) Edgar v. Blick (1816), 1 Stark. 464; Drant v. Brown (1825), 3 B. & C. 665; Laing v. Smith (1862), 3 F. & F. 97. See, too, Turner v. Power (1828), 7 B. & C. at p. 626.
- (y) Hegarty v. Milne (1854), 14 C. B. 627.
- (z) Hawkins v. Warre (1825), 3 B. & C. 690.

Minutes of the terms of letting, signed by an auctioneer, must be stamped (a); but, if not signed, it seems they may be given in evidence without a stamp (b). Signature, however, is not necessary to bring a document within the phrase in the Stamp Act "under hand only," and an agreement approved by the solicitors to the parties but not signed, which has been treated as an agreement, has been held not to be admissible in evidence without a stamp (c). Where an agreement embodies the terms of an abandoned lease, it is sufficient if the agreement only is stamped (d), but otherwise where the incorporated lease has been operative (e). Where there is an agreement in writing, it must be given in evidence; the lessor cannot sue for use and occupation generally (f). If an unstamped agreement has been lost parol evidence cannot be given of its contents (y).

An agreement for a lease, or with respect to the letting of any Amount of lands, tenements, or heritable subjects for any term not exceeding thirty-five years or for any indefinite term, is to be charged with 1891 (h), s. 75. the same duty as if it were an actual lease made for the term and consideration mentioned in the agreement (i).

A lease made subsequently to, and in conformity with such an agreement duly stamped, is to be charged with the duty of years, to be sixpence only. This must be done by means of a "duty-paid denoting stamp" under sect. 11, the agreement, stamped with the ad ralorem lease duty, being at the same time produced for inspection.

An agreement to take a lease signed only by the lessee requires Agreement to no more than a sixpenny stamp (k).

Where there is a counterpart of the agreement, the part Counterpart. signed by the lessor will bear the ad valorem stamp, and the counterpart either the same stamp or five shillings, whichever 18 the less, and the counterpart does not require a denoting stamp (l).

duty. Stamp Act, Agreements for leases of lands, &c. not exceeding thirty-five charged as leases.

take lease.

```
(a) Ramsbottom v. Mortley (1814),
2 M. & S. 445.
 \underline{(b)} Ramsbottom v. Tunbridge (1814),
<sup>2</sup> M. & S. 434.
 (c) Chadwick v. Clarke (1845), 1
C. B. 700. But see Doe v. Pedigriph
(1830), 4 C. & P. 312; Doe v. Cart-
wright (1820), 3 B. & A. 326.
 (d) Peurce v. Cheslyn (1835), 4
A. & E. 225.
```

v. Power (1828), 7

(e) Turner

B. & C. 625.

⁽f) Brewer v. Palmer \downarrow (1800), 3 Esp. 213.

⁽g) Smith v. Henley (1844), 1 Ph. 391. See R. v. Castle Morton (1820), 3 B. & A. 588.

⁽h) 54 & 55 Vict. c. 39. RICHARD (i) Infra, p. 176.

⁽k) Doe v. Wiggins (1843), 4 Q. B. 367; Glen v. Dungey (1849), 4 Ex. 61.

⁽¹⁾ Sect. 72.

SECT. II.—LEASES GENERALLY.

(1) STATUTORY REQUISITES.

29 Car. 2, c. 3, **88.** 1, 2. Parol leases · will only, with certain exceptions.

It is enacted by the Statute of Frauds that (sect. 1) all leases of any messuages, manors, lands, tenements, or hereditaments, to be leases at made by parol, and not put in writing and signed by the parties making the same, or their agents thereunto lawfully authorized by writing, shall have the force and effect of leases at will only; except (sect. 2) leases not exceeding the term of three years from the making thereof, whereupon the rent reserved to the landlord, during such term, shall amount unto two third parts at the least of the full improved value of the thing demised.

8 & 9 Vict. c. 106, s. 3. Leases to be by deed.

Further, it is enacted by the Real Property Act, 1845, that a lease, required by law to be in writing, of any tenements or hereditaments, made after the first day of October, 1845, shall be void at law, unless made by deed. Signature is not essential to a lease by deed, such a lease not being within the Statute of Frauds (m).

The practical effect of these statutory provisions, and of the decisions upon them, may be stated as follows:—

Leases of land, and other corporeal hereditaments, for a term not exceeding three years from the time of making, and whereby there is reserved to the landlord a rent equal to two-third parts at least of the full improved value of the demised premises, may be made verbally (n), or by writing not under seal.

1. Leases of land, &c., to end within three years. and reserving rent equal to two-thirds of full value. Computation of the three years.

The first section of the Statute of Frauds applies only where the tenancy, if good, must of necessity last for more than three years; if at the time of the agreement the tenancy may last for less than three years, it is within the exception of the second section (o). So also is an agreement which operates as an actual demise for less than three years, although coupled with an agreement or an option for a further term (p). The contract is divisible, and the actual demise, being within the exception in sect. 2 of the Statute of Frauds, will be valid (q). The exception is not restricted to leases commencing from the day of making (r);

(m) Aveline v. Whisson (1842), 4 M. & Gr. 801; Cherry v. Heming (1849), 4 Ex. 631.

(o) Ex parte Voisey (1882), 21 Ch. D. 442, p. 458.

(q) Hand v. Hall, supra.

⁽n) But verbal leases do not confer the right to sue the lessee for damages for not taking possession. See Edge v. Strafford (1831), 1 Cr. & J. 391, p. 397.

⁽p) Rollason v. Leon (1861), 7 H. & N. 73; Hand v. Hall (1877), 2 Ex. D. 355.

⁽r) Ryley v. Hicks (1726), 1 Stra. 651.

it is sufficient that they expire within three years computed from the date of the agreement (s).

Any words will make a parol lease which sufficiently express Parol lease. the intent. "You shall have a lease of my lands in D. for twenty-one years, paying therefor ten shillings per annum; make a lease in writing and I will seal it," was good before the statute, though no writing made (t).

Leases of land and other corporeal hereditaments for a term 2. Leases of which will not expire till more than three years from the day of making, or reserving less rent than two-third parts of the full improved value of the demised premises, must be made by deed. less rent than But an instrument not under seal purporting to demise land or other corporeal hereditaments for a longer term than three years, or reserving a rent not amounting to two-thirds of the full improved value, though void as a lease, will, if containing the requisites of a valid agreement (u), be construed as an agreement for a lease (x), of which specific performance may be enforced (y).

It was formerly considered that if the lessee had entered and paid rent under an instrument of this nature, a tenancy from year to year might be created (z); and that the instrument might indicate the terms of such tenancy (z). At the present day, where possession has been given and taken under an agreement for a lease, the applicability of the doctrine of Walsh v. Lonsdale (a) to the particular case has to be considered.

Leases of rights of common (b), rights of way, tithes (c), 3. Leases of

incorporeal hereditaments.

(s) Rawlins v. Turner (1699), 1 Ld. Raym. 736.

(t) Maldon's Case (1586), Cro. Eliz.

(u) Supra, p. 108.

(x) Tidey v. Mollett (1864), 16 C. B. N. S. 298; Hayne v. Cummings (1864), 16 C. B. N. S. 421; Bond v. Rosling (1861), 1 B. & S. 371. See also Cowen v. Phillips (1863), 33 Beav. 18.

(y) Parker v. Taswell (1858), 2 De G. & J. 559. In Zimbler v. Abrahams, [1903] 1 K. B. at p. 581, Vaughan Williams, L.J., referring to the decision in Parker v. Taswell, said: "I feel strongly that the result of Lord Chelmsford's decision is to neutralize the effect of the statute 8 & 9 Vict. c. 106."

(z) Clayton v. Blakey (1798), 8 T. R. 3; Doe v. Bell (1793), 5 T. R. 471; Richardson v. Gifford (1834), 1 A. & E. 52. See supru, p. 94.

(a) (1882), 21 Ch. D. 9, 14; discussed supra, p. 81. Whether the ground of decision in Furness v. Bond (1888), 4 T. L. R. 457, was sound, quære.

(b) Sury v. Brown (1623), Latch.

(c) Swadling v. Piers (1622), Cro. Jac. 613; Partridge v. Ball (1697), 1 Ld. Raym. 136; Gardiner v. Williamson (1831), 2 B. & Ad. 336, 338; Bridgland v. Shapter (1839), 5 M. & W. 375. But it seems that a grant of tithes to the owner of the land might be made without deed. See 2 Roll. Abr. 63, pl. 17.

land, &c.,

three years or reserving

two-thirds of full value.

for more than

advowsons (d), a several fishery (e), a warren (f), rights of shooting or sporting (g), or other incorporeal hereditaments (k) can at law be made only by deed (i), unless such hereditaments are appurtenant to some corporeal hereditament, in which case they will pass under a demise, even by parol, of such corporeal hereditament (k), though nothing is said about them at the time of the demise (l). An instrument not under seal demising land, and also purporting to demise incorporeal hereditaments, is not thereby rendered void as regards the land (m), though, where the rent reserved is an entire rent, no part of it can be recovered (n). But after the incorporeal hereditament—as a right of shooting—has been enjoyed under an invalid demise, the lessee is bound by the stipulations of the demise applicable to the period of his enjoyment (o).

(2) In what Cases Extrinsic Evidence is Admissible.

Exclusion of extrinsic evidence.

Where the contract of lease is reduced into writing, it is presumed that the writing contains all the terms of the contract (p); and, in the absence of fraud, mistake (q), or surprise (r), verbal

(d) See Crisp's Case (1589), Cro. Eliz. 164. But now as to advowsons, see supra, p. 2.

(e) D. of Somerset v. Fogwell (1826),

5 B. & C. 875, 882.

'(f) Bro. Abr. tit. "Lease," pl. 12. It has been thought, however, that a lease of a warren with the land (for less than three years) might be good without deed. See 5 B. & C. 883.

(g) Bird v. Higginson (1837), 2 A.

& E. 696; 6 A. & E. 824.

(h) Mayfield v. Robinson (1845), 7 Q. B. 486; Saunders v. Owen (1699), 2 Salk. 467.

(i) Wood v. Leadbitter (1845), 13 M. & W. 838, p. 842; Hewlins v. Shippam (1826), 5 B. & C. 221, per Bayley, J., p. 229. In Lowe v. Adams, [1901] 2 Ch. 598, Cozens-Hardy, J., said (at p. 600), "Whether Wood v. Leadbitter is still good law, having regard to Walsh v. Lonsdale [(1882) 21 Ch. D. 9], is very doubtful." Agreements for letting the tolls of any turnpike roads, signed by the trustees letting such tolls, or any two of them, or by their clerk or treasurer, and the lessee and his sureties, are valid, notwithstanding the same may not be by deed or under seal. See 3 Geo. 4, c. 126,

s. 57, not printed now among the public statutes (53 & 54 Vict. c. 51, s. 3); Markham v. Stanford (1863), 14 C. B. N. S. 376.

(k) Skull v. Glenister (1864), 16 C. B. N. S. 81, 102; Dobbyn v. Somers (1860), 13 Ir. C. L. R. 293; Bridyland v. Shapter (1839), 5 M. & W. 375.

(l) See Beaudeley v. Brook (1608), Cro. Jac. at p. 190; also Davies v. Jones (right of tenant to fish in stream) (1902), 18 T. L. R. 367.

(m) Reg. v. Hockworthy (1837), 7

A. & E. 492.

(n) Gardiner v. Williamson (1831). 2 B. & Ad. 336, 338; Bird v. Higginson (1835), 2 A. & E. 696. Cf. Doe v. Lloyd (1800), 3 Esp. 78.

(a) Adams v. Clutterbuck (1883), 10 Q. B. D. 403 (to leave a good breeding stock of game upon the ground); Thomas v. Fredericks (1847), 10 Q. B. 775 (to compensate tenants).

(p) But an antecedent agreement in writing may control the lease granted under it. See Salaman v. Glover (1875), L. R. 20 Eq. 444.

(q) See Garrard v. Frankel (1862),

30 Beav. 445.

(r) See Dart's V. & P. 6th ed.

of property.

or other extrinsic evidence is not in general admissible to contradict or add to the written instrument (s). If, for instance, a certain sum is specified therein as the annual rent, parol evidence will not be received to show that the tenant also agreed to pay an additional yearly sum for ground rent (t). So also parol evidence is not admissible to show what premises were intended to be demised—provided there is no latent ambiguity (u)—or to show an understanding between the parties that the rent should commence from a later date than that named in the agreement (x); and where the lease does not stipulate that the rent is to be a net rent without any deduction, verbal evidence is inadmissible to show the agreement of the parties that it should be such (y).

In the following cases, however, verbal evidence is admitted to Exceptions. add to or explain instruments of lease:—

In order to arrive at the true effect of a lease, parol evidence 1. Condition is admissible of the state of the premises at the time when it was granted, and of the mode in which they had been previously enjoyed (z); also of the nature and surroundings of the property at the date of the lease (a). Such evidence, it has been said, is admissible "to show the condition of every part of the property, and all other circumstances necessary to place the Court, when it construes an instrument, in the position of the parties to it, so as to enable it to judge of the meaning of the instrument " (b).

In the case of agricultural leases the parties are presumed to con- 2. Custom. tract with reference to the custom of the country, and evidence

Chap. xviii. sect. 7, p. 1174, for the cases in which parol evidence is admitted on these grounds as a defence to an action for specific performance; also Fry on Spec. Perf. 4th ed. Pp. 336 et seq.

(s) See Woollam v. Hearn (1802), Ves. at p. 218; Omerod v. Hardman (1801), 5 Ves. at p. 730; Baird v. Fortune (1861), 4 Macq. H. L. p. 149; and cf. Martin v. Pycroft (1852), 2 D. M. & G. 785.

(1) Preston v. Merceau (1779), 2 W. BL 1249.

(u) Meres v. Ansell (1771), 3 Wils. 275; Hope v. Atkins (1814), 1 Price, 143; Due v. Webster (1840), 12 A. & E 442; Barton v. Dawes (1850), 10. C. B. 261.

(x) Henson v. Coope (1841), 3 Sc. N. R. 48.

(y) Rich v. Jackson (1794), 4 Bro. C. U. 514. See 6 Ves. 334, note (c).

(z) Hall v. Lund (1863), 1 H. & C. See Osborne v. Wise (1837), 7 **676.** C. & P. 761.

(a) Doe v. Burt (1787), 1 T. R. 701; and as to identifying the property by evidence of occupation, see Kerslake v. White (1819), 2 Stark. 508; Paddock v. Findlay (1830), 1 Cr. & J. 90; Magee v. Lavell (1874), L. R. 9 C. P. p. 114.

(b) Per Lord Wensleydale in Baird v. Fortune (1861), 4 Macq. H. L. p. 149; quoted by Lord Coleridge, C.J., in Magee v. Lavell (1874), L. K.

9 C. P. p. 112.

of such custom is admitted, where not expressly or impliedly excluded by the terms of the lease (c).

3. Latent ambiguity.

Where a deed or instrument seems certain and without ambiguity, for anything that appears upon it, but there is some collateral matter outside the deed or instrument which produces an ambiguity, verbal or other extrinsic evidence is admissible to explain such ambiguity (d). Thus if upon the words of a lease of a right of way it is uncertain which of two rights of way is intended to be demised, parol evidence is admissible to show which was intended (e).

4. Technical terms.

Where terms are used which are known and understood by a particular class of persons in a certain special and peculiar sense, evidence to that effect is admissible (f). Thus verbal evidence has been admitted to show that the word "thousand," in a lease of a rabbit warren, by local usage meant 1,200 (g); also that the word "level," in a mining lease, was not used in the ordinary sense of a horizontal level, but in a sense peculiar to mines (h). It cannot, however, be inferred as matter of law that words occurring in a lease are used by the parties in a special or technical sense; it is a question for a jury to decide in what sense the words are used in each case (h). Where a word is defined generally by Act of Parliament to mean a precise quantity, or a precise time, the parties using that word in a contract must be presumed to employ it in the sense given to it by the Legislature, unless it appears from other parts of the contract that they used it differently (i). Thus, on the change of the calendar, saints' days in leases by deed were reckoned according to the new style (k); though, if the lease was not by deed, this construction was not enforced, and evidence might be given of the intention of the parties (1).

(c) Infra, Chap. IV. sect. 5; Chap. VII. sect. 3. See In re Stroud (1849), 8 C. B. 502, 531.

(e) Osborne v. Wise (1837), 7 C. & P. 761.

(f) Starkie on Evidence, 4th ed. 701; Taylor on Evidence, 9th ed. Vol. II. p. 76; Shore v. Wilson (1842), 9 C. & F. 365.

(g) Smith v. Wilson (1832), 3 B. & Ad. 728.

(h) Clayton v. Greyson (1836), 6 N. & M. 694; 5 A. & E. 302.

(i) See per Parke, J., in Smith v. Wilson (1832), 3 B. & Ad. p. 733.

(k) Doe v. Lea (1809), 11 East, 312; Smith v. Walton (1832), 8 Bing. 235.

(l) Doe v. Hopkinson (1823), 3 D. & Ry. 507; Doe v. Benson (1821), 4 B. & A. 588. Cf. Hoyg v. Norris (1860), 2 F. & F. 246.

⁽d) Bac. Maxims, Reg. 23. See Coker v. Guy (1801), 2 B. & P. 565; judgment in Doe v. Hiscocks (1839), 5 M. & W. 363, 369; Magee v. Lavell (1874), L. R. 9 C. P. p. 114.

Parol evidence (m) may also be given of agreements relating 5. Collateral to the premises demised collateral or additional to those contained in the written lease, provided such additional agreements (1) are not inconsistent with the terms of the written lease (n), (2) do not amount to an agreement for an interest in or concerning land within sect. 4 of the Statute of Frauds (o), and (3) are required by the party in whose favour they are made, as a condition of his granting or accepting the lease, as the case may be.

It has been held that a parol promise to kill down rabbits (p), to put the premises into a state of repair (q), or to pay the lessee a sum of money for this purpose (r) is collateral and can be enforced. In Angell v. Duke a parol promise by the intending lessor to do certain repairs and to send in additional furniture was at first held to be collateral (s), but was subsequently rejected on the ground that it should have formed part of the written agreement (t). Provided, however, that the third

(m) Claims under collateral parol agreements are frequently made after the death of the landlord who is alleged to have entered into them. It has been thought that under such circumstances the uncorroborated evidence of the claimant is not to be trusted. See judgment of Mellish, L.J., in Erskine v. Adeane (1873), L. R. 8 Ch. p. 766; Stevens v. Morson (1881), 26 Sol. Journ. 25; Re Wynne, Finch v. Wynne-Finch (1883), 48 L. T. p. 132. But in Lawrence v. Rowley, 27 Sol. Journ. 374, Times, April 4th, 1883, the Court of Appeal laid it down that on the trial before a Judge and jury of an action upon such a claim the Judge is not bound to tell the jury to be cautious in acting upon the uncorroborated evidence of the claimant, although it is usual and wise for him to do so.

(*) See the judgments of Pigott, B., in Morgan v. Griffith (1871), L. R. 6 Ex. p. 73, and of Mellish, L.J., in Erskine v. Adeane (1873), L. R. 8 Ch. P. 766; and see Flight v. Provident Association of London (1895), 11 T. L. R. 391, 12 ib. 51, and De Lassalle v. Guildford, [1901] 2 K. B. 215, 223.

(o) Angell v. Duke (1875), L. R. 10 Q. B. at pp. 177—179. The question whether a collateral parol agreement by the landlord to do something

during the whole of the term is an agreement not to be performed within a year within sect. 4 of the Statute of Frauds was raised in argument in Erskine v. Adeane (1873), L. B. 8 Ch. at p. 764, but is not adverted to in the judgments. It is conceived that the principle of Donellan v. Read (1832), 3 B. & Ad. p. 906, and Cherry v. Heming (1849), 4 Ex. 631, would apply; and that, by the signature or execution of the lease by the party in favour of whom the agreement was made, such agreement would be considered to have been entirely executed on one side within the year; though see Milsom v. Stafford (1899), 80 L.T. 590. As to an oral agreement suspending a written agreement, see Wallis v. Littell (1861), 11 C. B. N. S. 369.

(p) Erskine v. Adeane (1873), L. R. 8 Ch. 756.

(q) Mann v. Nunn (1874), 43L. J. C. P. 241 (but this case was questioned by Blackburn, J., in Angell \forall . Duke (1875), 32 L. T. 320).

(r) Seayo v. Deane (1828), 4 Bing. 459. In this case the landlord, after the tenant had done the repairs, made a further promise to contribute to them.

(e) (1875), L. B. 10 Q. B. 174.

(t) (1875), 32 L. T. 320.

agreements.

of the above requisites is satisfied, this objection does not seem to apply (u).

In De Lassalle v. Guildford (v) the lease did not express the whole of the terms of the bargain between the parties, and parol evidence was admitted of a verbal warranty by the lessor which was collateral to, and not contradictory of, the lease.

Misrepresentation.

Where there is no promise, but simply a representation by the lessor with respect to the state of the premises, and the representation turns out to be untrue, the lessee has no cause of action unless it was made fraudulently (x), and for fraudulent misrepresentation damages can be obtained only once (y).

(3) FORM AND CONSTRUCTION OF LEASE.

Lease, how constituted.

No special form of words is necessary to constitute a lease for years. Whatever words are sufficient to explain the intent of the parties that the one shall divest himself of the possession and the other come into the exclusive possession for a determinate time (c), such words, whether they run in the form of a licence (a), covenant (b), or agreement (c), are of themselves sufficient, and will in construction of law amount to a lease for years as effectually as if the most proper and pertinent words had been made use of for that purpose; for a lease for years being a contract for the possession and profits of lands on the one side, and a recompense of rent, or other income, on the other, if the words made use of are sufficient to prove such a contract, in what form soever they are introduced, or however variously applicable, the law calls in the intent of the parties, and models and governs the words accordingly (d).

(u) Erskine v. Adeane (1873), L. R. 8 Ch. 756.

(v) [1901] 2 K. B. 215, 222, C. A. (x) Burtsell v. Bianchi (1891), 65 L. T. 678; Kennard v. Ashman (1894), 10 T. L. R. 213 (see p. 447); Longman v. Blount (1896), 12 T. L. R. 520 (doubted in De Lassalle v. Guildford, supra); Green v. Symons (1897),

13 ib. 301. (y) Clarke v. Yorke (1882), 52 L. J. Ch. 32.

(z) See Morgan v. Bissell (1810), 3 Taunt. p. 67; Doe v. Ries (1832), 8 Bing. 178; Doe v. Dodd (1833), 5 B. & Ad. p. 693; Stratton v. Pettit (1855), 16 C. B. 420. (a) Doe v. Dodd (1833), 5 B. & Ad. p. 694. See Hall v. Sebright (1646), 1 Mod. 14. But it must be clear that the possession of the licensee is to be exclusive: Doe v. Wood (1819), 2 B. & A. 724, 739.

(b) Whitlock v. Horton (1606), Cro. Jac. 91. See Right v. Thomas (1763), 3 Burr. 1441, 1446; Richards v. Soley (1677), 2 Mod. 80; Tisdale v. Esser (1611), Hob. 34; Drake v. Munday (1631), Cro. Car. 207; Fenny v. Child (1814), 2 M. & S. 255, 257.

(c) Lovelock v. Franklyn (1846), 8 Q. B. 371.

(d) Bac. Abr. (K.) p. 817; Duxbury v. Sandiford (1899), 80 L. T. 552.

A lease may be made by a correspondence, in which one party By correoffers to let or take on certain terms fully and definitely stated, and the other unconditionally accepts such offer (e).

spondence.

Leases for lives of corporeal hereditaments, if not made by a Lease for life. conveyance operating under the Statute of Uses, or in pursuance of a power to lease, must formerly have been perfected by livery of seisin. This ceremony is not now requisite, for all 8 & 9 Vict. corporeal tenements and hereditaments are, as regards the conveyance of the immediate freehold thereof, deemed to lie in grant as well as in livery.

c. 106, s. 2.

The ordinary form of lease by deed is technically said to con-Ordinary sist of the premises, habendum, reddendum, and covenants (f).

form of lease.

THE PREMISES contain the date, names and descriptions of the Premises. parties, recitals, consideration, operative words, parcels, and the exceptions and reservations.

THE DATE of a deed is not of the substance of the deed; for if it Date. has no date, or a false or impossible date, yet the deed is good (g).

A lease by deed is presumed to be delivered on the day on which it bears date (h); but a party may show that the deed was delivered on a different day, and in that case it takes effect from the day of delivery, and not from the day of the date (i).

RECITALS are not usually inserted in leases, even when they are Recitals. made in pursuance of a power to lease; the practice being to refer generally to the power, and the instrument creating it, in the operative words. Cases may, however, occur in which a recital of the title of the lessor is desirable in order to explain special provisions in the lease (k).

THE CONSIDERATION expresses the recompense to be rendered by Considerathe lessee for the use of the demised premises. This may either tion. consist of the payment of rent and performance of covenants, or of the payment of a sum of money as a fine, the execution of improvements on the demised premises, or in fact any benefit conferred on the lessor either by the lessee, or by anyone else on his behalf. Where, in pursuance of an agreement for a lease, a

(e) Chapman v. Bluck (1838), 4 Bing. N. C. 187. See Jones v. Reynolds (1841), 1 Q. B. 506.

(f) The statutory form of lease given by the Leases Act, 1845 (8 & 9 Vict. c. 124), is seldom, if ever, used.

(g) Goddard's Case (1584), 2 Rep. at p. 5 a.

(h) Hall v. Denbigh (1600), Cro.

Eliz. 773. See also House v. Laxton (1602), ib. 890.

(i) Steele v. Mart (1825), 4 B. & C.

272, 279, 280.

(k) See, for instance, the form of lease in 5 Day. Conv. Part I. 3rd ed. p. 126. Recitals may be referred to to show what premises are demised: Doe v. Osborne (1840), 4 Jur. 941.

lease is tendered to the lessor for execution in which the consideration is not truly stated, the lessor is not bound to execute the lease (l).

Operative words.

The operative words are those by which the lessor actually lets the premises to the lessee. The term generally used is "demise," but any words clearly indicating an intention of making a present demise will suffice (m). Under the word "demise" there is implied a covenant for quiet enjoyment (n).

DESCRIPTION OF THE PROPERTY LEASED.

Parcels.

The parcels contain a description of the property intended to be let. In agricultural leases it is generally sufficient to specify the name of the farm, the number of acres it contains, and the parish and county in which it is situated. In leases of houses in towns it is usually sufficient to mention the town, street, and number of the house. Where the identity of the demised premises can be perfectly established by this description, other particulars should be omitted, since questions frequently arise as to how far words of particular explanation qualify words of general description (o).

Falsa demonstratio. Frequently a choice has to be made between different parts of the description. The rule is clearly settled, that when there is a sufficient description set forth of premises by giving the particular name of a close or otherwise, a false demonstration—i.e. an incorrect addition to the description inserted only for the purpose of identifying the property—may be rejected; but if premises are described in general terms, and a particular description is added, the latter controls the former (p).

Thus where the premises are ascertained with certainty it is permissible to reject an erroneous measurement (q), or name (r),

(1) Vonhollen v. Knowles (1844), 12 M. & W. 602. As to the necessity of correctly stating the consideration under the Stamp Act, 1891, see infra, p. 178.

(m) Bac. Abr. (K.) 817; supra, p. 130.

(n) Infra, Chap. IV. sect. 10 (1).

(o) 2 Platt on Leases, 27. See Doe v. Galloway (1833), 5 B. & Ad. 43; Dyne v. Nutley (1853), 14 C. B. 122.

(p) See per Parke, J., in Doe v. Galloway (1833), 5 B. & Ad. at p. 51;

Morrell v. Fisher (1849), 4 Ex. p. 604; Shep. Touch. p. 247. See Doe v. Greathed (1806), 8 East, at pp. 103, 104; Doe v. Jersey (1818), 1 B. & A. at p. 558; Cowen v. Truefitt, Lim. (on appeal), [1899] 2 Ch. 309.

(q) Llewellyn v. E. of Jersey (1843), 11 M. & W. 183; Manning v. Fitzgerald (1859), 29 L. J. Ex. 24. Cf. Jack v. M'Intyre (1845), 12 Cl. & F.

(r) Rorke v. Errington (1859), 7 H. L. C. p. 625. or number (s), or reference to the occupation (t), or other erroneous description (u). Where the words of description when examined do not fit any particular property with accuracy, and if there must be some modification of them in order to place a sensible construction on the instrument, the whole instrument must be looked at fairly in order to see what are the leading words of description and what is the subordinate matter, and for this purpose evidence of extrinsic facts may be regarded (x).

On the other hand, where there is property in respect of which all the facts of the description are found to be true, so that the property exactly fits the description, the whole of that property, and nothing more, passes (y). Thus where a farm or houses are described as being in the occupation of a specified person, and only a part is in his occupation, that part alone will pass (z). So where they are described as being in a particular city (a), parish (b), or county (c), only the part so situated will pass. in accordance with the rule quoted above, the same principle applies where property which is described generally in the first instance is particularised by a specific description (d); where, for instance, the details are enumerated either in the body of the deed (e), or in a schedule (f), or by reference to a plan (q). In such cases only the items so enumerated will pass (h).

Where property is described by reference to abuttals, these are Abuttals. not construed strictly, unless a strict construction increases the

(8) Cowen v. Truefitt, Lim., [1898] 2 Ch. **55**1.

(u) Cunningham v. Butler (1861),

3 Giff. 37.

122,

(x) Per Lord Selborne, C., in Hardwick v. Hardwick (1873), L. R. 16 Eq. 168, 175. See Re Bright-Smith (1886), 31 Ch. D. 314.

(y) Per Erle, C.J., in Webber v. Stanley (1864), 16 C. B. N. S. p. 752. (z) Re Seal, [1894] 1 Ch. 316; Magee v. Lavell (1874), L. R. 9 C. P. 107; Morrell v. Fisher (1849), 4 Ex. 591; Dyne v. Nutley (1853), 14 C. B.

(a) Hall v. Combes (1592), Cro.

Eliz. 368; Doddington's Case (1594), 2 Rep. 32 b; Doe v. Greathed (1806), 8 East, 91.

(b) Pedley v. Dodds (1866), L. R. 2 Eq. 819; Evans v. Angell (1858), 26 Beav. 202.

(c) Webber v. Stanley, supra.

- (d) Doe v. Parkin (1814), 5 Taunt. 321.
- (e) Griffiths v. Penson (1863), 9 Jur. N. S. 385.
- (f) Wood v. Rowcliffe (1851), 6 Ex. 407; Re Craig (1869), Ir. R. 4 Eq. 158.
- (g) Barton v. Dawes (1850), 10 C. B. 261. As to the construction of a deed by reference to a plan, see Lyle v. Richards (1866), L. R. 1 H. L. 222.
- (h) But see Baker v. Richardson (1858), 6 W. R. 663.

⁽t) Wrottesley v. Adams (1559), Plowd. p. 191; Goodtitle v. Southern (1813), I M. & S. 299; Doe v. Galloway (1833), 5 B. & Ad. 43; Martyr V. Lawrence (1864), 2 D. J. & S. 261.

value of the land, and it was an inducement to the lessee that he should have the land actually described (i).

Premises included in demise.

Whether anything is or is not parcel of the premises demised is a question of fact for a jury (k). A lease of rooms in a house, in themselves constituting a separate dwelling, includes the outer walls of the house so far as they solely belong to the rooms let; hence the lessor or another tenant is not entitled to place advertisement boards over such part of the walls (1). strip of waste land between the demised premises and an adjacent high-road, the soil of the land and the road being in the lessor will be presumed to be included in the demise (m). Land enclosed by the lessee is deemed to be enclosed for the benefit of the In some cases a lease may operate to convey to the lessee an interest in the soil to the centre of all roads and streets (o) adjacent to the demised premises (p); but, if there be any presumption to that effect, it is capable of being rebutted by an inference to the contrary arising from the surrounding circumstances, regarded in connection with the terms of the lease (q).

In framing parcels (r), the following particulars should be borne in mind:

Land has been said to mean strictly arable land (s); but the term comprehends in law any ground, soil, or earth whatsoever, as meadows (t), pastures, moors, marshes, and heath (u); and will $prim\hat{a}$ facie include all buildings, woods, or water thereupon (u), and all mines and minerals thereunder (x).

(i) Roberts v. Karr (1809), 1 Taunt. 495.

(k) Per Buller, J., in Doe v. Burt (1787), 1 T. R. at p. 704; Lyle v. Richards (1866), L. R. 1 H. L. 222. As to construing a lease with reference to the state of facts existing at the time when it was executed, consider Crisp v. Price (1814), 5 Taunt. 548, where it was held that, at law, a covenant by lessors that the plaintiff, the lessee, should have the use of an intended road, when made, could not be construed as applying to a road intended at the time of the contract for the lease, but made and completed before its execution; but the Court added "The plaintiff will be relieved in equity."

(1) Carlisle Café Co. v. Muse Bros. & Co. (1897), 46 W. R. 107. Though it would seem that the user of them

by the tenant must be reasonable: Ibid.

(m) Due v. Pearsey (1827), 7 B. & C. 304.

(n) Kingsmill v. Millard (1855), 11 Ex. 313.

(o) See Re White's Charities, [1898] 1 Ch. 659.

(p) Hodges v. Lawrance (1854). J. P. 347. See Tidswell v. Whitworth (1867), L. R. 2 C. P. p. 333, and cases there cited.

(q) Mappin Bros. v. Liberty & Co.. [1903] 1 Ch. 118, 128.

(r) As to parcels in mining leases. see infra, p. 200; and as to the meaning of "mines" and "minerals," see infra, pp. 196 and 199.

(s) Shep. Touch. 91.

(t) Cooke v. Yates (1827), 4 Bing. 90.

(u) Co. Litt. 4 a.

(x) Neucomen v. Coulson (1877), 5

49 (1'

•

Legal

meaning of

description.

1. "Land."

terms of

Under the word water, it seems that a right of fishing will 2. "Water." pass, but the soil will not pass (y). To include the soil under the water the description should be land covered with water (y). under the word pond or pool, it seems that the soil will pass (z).

Farm includes the farm-house, farm buildings, and the lands 3. "Farm." thereunto belonging, or therewith used (a); and may also comprehend woodlands (b).

The words farming buildings, it seems, include the farm-house (c).

Messuage or house (the terms are synonymous (d)) may com- 4. "Mesprehend, beside the house and buildings adjoining, a courtyard, "house." garden (e), and orchard belonging to the same (f), and the stables and other outhouses necessary for the convenient occupation of the house (g).

In the absence of any context modifying the popular interpretation of the word "house," it imports the physical erection as distinguished from the interior arrangement, so that a building containing several residential flats may constitute only one "house" within the meaning of a covenant not to erect more than a specified number of houses on a plot of land (h). But where a lessee has covenanted to erect "no more than one messuage or dwelling-house," the context may be such as

Ch. D. p. 143. So "close" includes both the surface and the subsoil: Cox v. Glue (1848), 5 C. B. p. 551. A grant of a "warren" in general imports a grant of a franchise only: E. Beauchamp v. Winn (1873), L. R. 6 H. L. 223, pp. 236, 238; but it seems that, by a lease of a warren in a man's own ground, in the absence of any context showing a different intention, the land itself will pass: Co. Litt. 5 b; Shep. Touch. 90; L. R. 6 H. L. pp. 236, 237, 255. Under a lease of a "warren of conies," the land will not pass: E. Beauchamp v. Winn, supra.

(y) Co. Litt. 4 b.

(z) Co. Litt. 5 b. See R. v. Old Alresford (1786), 1 T. R. 359.

(a) Shep. Touch. 93.

- (b) Goodtitle v. Paul (1760), 2 Burr. 1089; Portman v. Mill (1839), 3 Jur. **356,**
- (c) Cooke v. Cholmondeley (1858), 4
- (d) See Doe v. Collins (1788), 2 T. R. 502.

- (e) Carden v. Tuck (1588), Cro. Eliz. 89; Smith v. Martin (1672), 2 Wms. Saund. (ed. 1871) 806, see notes; Hewson v. South Western Ry. Co. (1860), 8 W. R. 467; Grosvenor v. Hampstead Junction Ry. Co. (1857), 1 De G. & J. 446; Cole v. West London, &c., Ry. Co. (1859), 27 Beav. 242; Marson v. London, Chatham and Dover Ry., Co. (1868), L. R. 6 Eq. 101; Salter v. Metrop. Dist. Ry. Co. (1870), L. R. 9 Eq. 432.
- (f) Shep. Touch. 94; Co. Litt. 5 b, 56 b.
- (g) Doe v. Collins (1788), 2 T. R. 498. See Steele v. Midland Ry. Co. (1866), 1 Ch. 275, 291. A fascia passes as parcel of the premises: Francis v. Hayward (1882), 22 Ch. D. 177.
- (h) Kimber v. Admans, [1900] 1 Ch. 412. As to the ambiguity and artificial meaning sometimes attaching to the word "house," see per Lord Halsbury in Grant v. Langston, [1900] A. C. at pp. 390, 391.

to prohibit the erection of a block of flats (i), or a double-tenement house (k).

5. "Tenements."

The word tenements in its proper and legal sense signifies everything that may be holden, provided it be of a permanent nature, whether it be of a substantial and sensible, or of an unsubstantial, ideal kind (l).

6. " Premises."

The word premises in "house and premises" will be restricted to matters intimately connected with the house (m).

7. "More or less."

The words more or less, appended to the measurements in the parcels, being indeterminate, if the land occupied by the tenant exceeds such measurements but corresponds with the abuttals, the tenant has a fair title to insist that it was meant that so much should pass by the demise. And where the lessor sees the daily progress of a building which does not extend beyond the land defined by the abuttals, he will not be allowed to claim the surplus beyond the measured distance as an encroachment (n). The words only apply in cases where the difference bears a small proportion to the amount named (o), and similarly as to the words "or thereabouts" (p).

8. "Appurtenances."

The word appurtenances will pass only things which have been used together with the house or land demised or which are reputed or accepted as parcel thereof (q).

To a house.

As appurtenant to a house, under the word "appurtenances" a curtilage and a garden (r) may pass; also an incorporeal right, such as a right of way (s), or a right of turbary (t): but, as a general rule, not land (u). As appurtenant to land there may pass, where the same word is used, a sheep-walk (x), also a right

To land.

- (i) Rogers v. Hosegood, [1900] 2 Ch. 388.
- (k) Ilford Park Estates v. Jacobs, [1903] 2 Ch. 522.
- (1) Black. Comm. Bk. II. Chap. II. p. 16, cited L. R. 6 H. L. p. 241.
- (m) Minton v. Gleiger (1873), 28L. T. 449. As to "yards," see Willis v. Watney (1881), 51 L. J. Q. B. 181.

(n) Neale v. Parkin (1794), 1 Esp.

229, 230.

- (o) Cross v. Eglin (1831), 2 B. & Ad. 110. See Day v. Finn, Owen, 133.
- (p) Davis v. Shepherd (1866), L. R. 1 Ch. 410.
- (q) Bryan v. Weatherhead (1623), Cro. Car. 17; Kerslake v. White (1819), 2 Stark. 508; Chappell v.

- Mason (1894), 10 T. L. R. 404. See . Maitland v. Mackinnon (1862), 1 H. & C. 607; Smith v. Ridgway (1866), L. R. 1 Ex. 331.
- (r) Bettisworth's Case (1591), 2 Rep. at p. 32.
- (s) Thorpe v. Brumfitt (1873), 8 Ch. 650.
- (t) Solme v. Bullock (1684), 3 Lev. 165; Dobbyn v. Somers (1860), 13 Ir. C. L. R. at p. 300.
- (u) Hearn v. Allen (1627), Cro. Car. 57; Wilmote v. Carn (1603), Cro. Eliz. 918; Buck v. Nurton (1797), 1 B. & P. 53; but see Doe v. Martin (1777), 2 W. Bl. 1148.
- (x)_Hurleston v. Woodroffe (1619), Cro. Jac. 519.

of turbary (y), or an existing right of way (z), but not, it seems, a right of common (a); and not a right of way or other easement which has become extinct, or does not exist in point of law by reason of unity of seisin of the dominant and servient tenements (b), unless such easement is either an easement of necessity, or in its nature continuous, in which case it will pass by implication of law without any words of grant (c).

Under the words with all ways to the same belonging or apper- ways. taining, no way will pass unless legally appurtenant (d); or unless it appears from the grant itself that the parties meant to use the words in a more extended sense than the legal one (e).

In connection with ways, it is to be borne in mind that, as Prescription. between two tenants of separate tenements held under the same landlord, a right of way cannot be acquired by prescription, under sect. 2 of the Prescription Act (2 & 3 Will. 4, c. 71), for the tenant of the one tenement against the tenant of the other. A tenant cannot claim such a right against another tenant, for a claim of a right of way must necessarily be a claim by the owner of a fee against the owner of a fee (f). Further, a tenant of land cannot by user during his tenancy acquire an easement, such as a right to go to and use a well, over other land belonging to and in the occupation of his landlord. Such user can neither confer a title by prescription, nor raise the prescription of a lost grant(g).

Under the word "appurtenances" a quasi-easement—that is, Quasia user in the nature of an easement, exercised by the lessor over

easements.

(y) See note (t), p. 136. (z) Morris v. Edgington (1810), 3 Taunt. p. 30; Hinchcliffe v. Kinnoul (1838), 5 Bing. N. C. 1; Skull v.

Glenister (1864), 16 C. B. N. S. 81, p. 91; Thorpe v. Brumfitt (1873), L. R. 8 Ch. 650. See Worthington v. imson (1860), 2 E. & E. 618; Har-

ding v. Wilson (1823), 2 B. & C. 96. (a) Beaudely v. Brook (1608), Uro. Jac. p. 190. See Bradshaw v. Eyre

(1598), Cro. Eliz. 570.

(b) Per Denman, C.J., in Plant v. James (1833), 5 B. & Ad. at p. 794, 4 A. & E. p. 761; Grymes v. Peacock (1610), 1 Bulstr. 17; Saundeys v. Oliffe (1591), Moo. 467; Whalley v. Tompson (1799), 1 B. & P. 371; Clements v. Lambert (1808), 1 Taunt. 205; Barlow v. Rhodes (1833), 1 Cr.

& M. 439, p. 448.

(c) Polden v. Bustard (1865), L. R. 1 Q. B. p. 161; Watts v. Kelson (1871), L. R. 6 Ch. 166, 173, 174; Pheysey v. Vicary (1847), 16 M. & W. p. 491; Corp. of London v. Riggs (1880), 13 Ch. D. 798.

(d) Harding v. Wilson (1823), 2 B. & C. 96; Brett v. Clowser (1880), 5 C. P. D. 376; Baring v. Abingdon,

[1892] 2 Ch. 374.

(e) Barlow v. Rhodes (1833), 1 Cr.

& M. 439.

(f) See per Collins, M.R., in Kilgour v. Gaddes, [1904] 1 K. B. 457; 89 L. T. 444; 19 T. L. R. 697; 20 T. L. R. 240.

(g) Macnayhten \mathbf{v} . Baird, [1903] 2 Ir. R. 731, 746.

land of his own adjacent to the demised premises—will pass if it appears that such was the intention of the parties (h).

9. "Therewith used and enjoyed."

It was formerly held that, where there had been unity of possession, under a grant of ways and other easements at the time of the lease used or enjoyed with the demised premises only those easements would pass which had actually existed as legal easements before the unity of possession of the dominant and servient tenements (i). The words revived a right of way which had once existed, but could not create such a right (j). It is settled, however, that the words are effectual to pass a quasieasement which is in its nature continuous and apparent (k), and a right of way, if it is over a formed road (l), is regarded as an easement of this character (m). It is sufficient if the right has been used with any part of the demised premises (n). But under the words "heretofore used and enjoyed" a right of way which has been disused for some years before the date of the grant will not pass (o).

Conveyancing Act, 1881(p), s. 6, sub-s. (1).

As regards leases made after the 31st December, 1881, it has been enacted by the sixth section of the Conveyancing Act, 1881, as follows:—"(1) A conveyance" (which word in this section includes (q) a lease by deed) "of land shall be deemed to include, and shall by virtue of this Act operate to convey, with the land, all buildings, erections, fixtures, commons, hedges, ditches, fences, ways, waters, watercourses, liberties, privileges, easements, rights, and advantages whatsoever, appertaining or reputed to appertain to the land, or any part thereof, or at the time of conveyance demised, occupied, or enjoyed with, or reputed or known as part or parcel of, or appurtenant to, the land or any part thereof. (2) A conveyance of land, having houses or other buildings thereon, shall be deemed to include, and shall by virtue of this Act operate to convey, with the land, houses, or other buildings, all outhouses, erections, fixtures, cellars, areas.

Sub-sect. (2).

⁽h) Morris v. Edgington (1810), 3 Taunt. 24; Thomas v. Owen (1887), 20 Q. B. D. 225.

⁽i) Barlow v. Rhodes (1833), 1 Cr. & M. p. 448.

⁽j) Langley v. Hammond (1868), L. B. 3 Ex. p. 168.

⁽k) Watts v. Kelson (1871), L. R. 6 Ch. 166.

⁽l) Ibid., per Mellish, C.J., p. 174.

⁽m) Kay v. Oxley (1875), L. R. 10

Q. B. 360; Barkshire v. Grubb (1881). 18 Ch. D. 616; Bayley v. G. W. Ry. Co. (1884), 26 Ch. D. 434; Ford v. Metrop. Ry. Co. (1886), 17 Q. B. D. 12.

⁽n) Kooystra v. Lucas (1822), 5 B. & A. 830.

⁽o) Roe v. Siddons (1888), 22 Q. B. D. 224.

⁽p) 44 & 45 Vict. c. 41.

⁽q) Sect. 2 (∇).

courts, courtyards, cisterns, sewers, gutters, drains, ways, passages, lights (r), watercourses, liberties, privileges, easements, rights, and advantages whatsoever, appertaining or reputed to appertain to the land, houses, or other buildings conveyed, or any of them, or any part thereof, or at the time of conveyance demised, occupied, or enjoyed with, or reputed or known as part or parcel of, or appurtenant to, the land, houses, or other buildings conveyed, or any of them, or any part thereof."

This sixth section applies only if and as far as a contrary intention is not expressed in the conveyance, and has effect subject to the terms of the conveyance and to the provisions therein contained; and, further, it is not to be construed as conveying to any person any property, right, or thing in the section mentioned further or otherwise than as the same could have been conveyed to him (s) by the conveying parties (t). But in the absence of any expression of a contrary intention the lessee is generally entitled to the benefit of all quasi-easements which, according to the above decisions, would pass under the words "occupied or enjoyed with " the demised premises.

It seems, indeed, that upon the severance of two tenements the Severance of grantee will, even without words of express grant, whether in the deed or incorporated by virtue of the Conveyancing Act, take any continuous and apparent easements which have been exercised for the benefit of the tenement granted over the other (u), such as a right of light (x), or a defined and permanent right of way (y). But in general, where the servient part of the tenement is granted, there is no corresponding implied reservation of easements in favour of the grantor (z); though the rule is subject to certain

tenements.

(r) See Beddington v. Atlee (1887), 35 Ch. D. 317; Broomfield v. Williams, [1897] 1 Ch. 602; Quicke v. Chapman, [1903] 1 Ch. 659.

(8) Accordingly, the above-quoted provision in sub-sect. (2) of sect. 6 of the Act of 1881 as to lights applies only to such lights as the lessor, or other conveying party, had at the time of the lease or other conveyance power to grant by express words. See Quicke v. Chapman, supra.

(1) Sub-sects. (4) and (5). As to what will amount to an expression of a contrary intention, see Birmingham. &c., Banking Co. v. Ross (1888), 38 Ch. D. p. 308; Re Peck and School

Board for London, $\lceil 1893 \rceil 2$ Ch. 315; Broomfield v. Williams, $\lfloor 1897 \rfloor$ 1 Ch. 602.

(u) Pearson v. Spencer (1861), 1 B. & S. p. 583; Polden v. Bastard (1865), L. R. 1 Q. B. p. 161; Watts v. Kelson (1871), L. R. 6 Ch. p. 174.

(x) Phillips v. Low, [1892] 1 Ch.

(y) Brown v. Alabaster (1887), 37 Ch. D. 490; Kay v. Oxley (1875), I. R. 10 Q. B. 360; Thomas v. Owen (1887), 20 Q. B. D. 225; and see cases cited supra, p. 138, note (m).

(z) Wheeldon v. Burrows (1879), 12 Ch. D. 31, 49.

exceptions, as in the case of ways of necessity (a), and it will not authorize any act contrary to the good faith of a particular contract (b). If the lessor wishes to reserve rights in derogation of his grant, he must do so in plain terms (c).

Implied grant of easement.

An easement may be created by implied grant, if the circumstances show that it was the intention of the parties that the easement should be enjoyed by the lessee (d). Thus a grant of a right of way may be implied from a reference on a plan to a new street as adjoining the demised premises (e); though the lessee may not be entitled to the full width of the road as indicated in the plan, but only to a convenient way (f).

Where upon a grant of a right of way the way has not been defined, it is for the grantor to select it; but when he has done so, he cannot afterwards alter the way (g).

A grant of land with a building upon it carries the right to light as against adjacent premises of the grantor sufficient for the ordinary purposes of the building (h), but the grantor may reserve to himself the right to obstruct an easement of light which passes on the grant (i).

It is, however, to be borne in mind that a lease of a house, together with all lights thereto belonging or therewith used or enjoyed, is not a lease of all light then actually falling upon the windows of the house, but only of such right to light as the lessor then had (k). The implication of a grant to a lessee of a right to the access of light over land adjacent to the demised land

Light.

- (a) Wheeldon v. Burrows, supra, at p. 57; Taws v. Knowles, [1891] 2 Q. B. p. 568.
- (b) Russell v. Watts (1885), 10 App. Cas. p. 596.
- (c) Mundy v. Duke of Rutland (1883), 23 Ch. D. 81; Whitehead v. Parks (1858), 2 H. & N. 870.
- (d) Hall v. Lund (1863), 1 H. & C. 67b; Cannon v. Villars (1878), 8 Ch. D. 415.
- (c) Espley v. Wilkes (1872), L. R. 7 Ex. 298; Furness Ry. Co. v. Cumberland Building Society (1885), 52 L. T. 144.
- (f) Harding v. Wilson (1823), 2 B. & C. 96.
- (q) Deacon v. S. E. Ry. Co. (1869), 61 L. T. 377. As to ways of necessity, see Bolton v. Bolton (1879), 11

Ch. D. 968; as to the extent of a right of way, see Cannon v. Villars, 8 Ch. D. 415; Cousens v. Rose (1871), L. R. 12 Eq. 366; Hawkins v. Carbines (1857), 27 L. J. Ex. 44; and as to mode of access, Cooke v. Ingram (1893), 68 L. T. 671.

(h) Corbett v. Jonas, [1892] 3 Ch. 137.

- (i) Haynes v. King, [1893] 3 Ch. 439. Cf. White v. Harrow (1902), 86 I. T. 4, where the lessee of a house, demised with all lights, had covenanted not to object to any works to adjoining premises which might be sanctioned by the lessor.
- (k) Per Joyce, J., in Godwin v. Schweppes, [1902] 1 Ch. at p. 932, referring to Booth v. Alcock (1873), L. R. 8 Ch. 663.

cannot be made as against a lessor who could not have made an express grant of that right (l).

Where nothing appears to the contrary, fixtures will pass upon a grant of a house although they are not mentioned (m). But the specific mention of certain fixtures will be taken as showing an intention that others should not pass (n). The acceptance of a lease of a house containing fixtures does not raise an implied contract to pay for them (o).

Where there was a contract for the grant and acceptance of a lease of a house containing fixtures, and before the date for the commencement of the lease the lessor wrongfully removed some of the fixtures, it was held that the lessee's action for damages was founded on tort within the meaning of sect. 116 of the County Courts Act, 1888, and that, having obtained judgment for 20l., he was entitled to costs on the High Court scale (p).

EXCEPTIONS AND RESERVATIONS.

An exception is always of part of the thing granted, and of a thing in esse at the time of the grant. It must not be repugnant to the grant so as to make it nugatory (q). A reservation is of a thing not in esse, but newly created or reserved out of the land or tenement demised (r). What will pass by words in a grant will be excepted by the same or the like words in a reservation (s). Strictly, however, the term "reservation" applies only to rent and to payments and services in the nature of rent which can be said to issue out of the demised premises (t). A reservation of incorporeal rights, such as the liberty of hunting, fishing, and fowling, is not legally a reservation or exception. It is a privilege granted to the lessor, and it takes effect by way of grant by the lessee (t). So it has been said that a right of way cannot in

(l) Quicke v. Chapman, [1903] 1 (h. 659, 667, 671; referred to by Byrne, J., in Financial Times v. Bell (1903), 19 T. L. R. 433.

(m) Colegrave v. Dias Santos (1823), 2 B. & C. 76; Longstaffe v. Meayoe (1834), 2 A. & E. 167. As to the operation of the Bills of Sale Acts on grants of fixtures, see Weir on Bills of Sale, pp. 80—89, 165, 185.

(n) Hare v. Horton (1833), 5

B. & Ad. 715.

(0) Goff v. Harris (1843), 5 M. & Gr. 573.

(p) Sachs v. Henderson, [1902] 1

K. B. 612.

(q) Dorrell v. Collins (1582), Cro. Eliz. 6; Horneby v. Clifton (1567), Dyer, 264 a. See Miller v. Pratt (1606), ib., note (40); and cf. Leigh v. Shaw (1594), Cro. Eliz. 372; Cochrane v. M'Cleary (1869), Ir. R. 4 C. L. 165; Jenkins v. Green (No. 1) (1858), 27 Beav. 437; Moroney v. Macnamara (1872), 20 W. R. 905.

(r) Co. Litt. 47 a. See Cooper v. Stuart (1889), 14 A. C. p. 289.

(s) Shep. Touch. 100.

(t) Doe v. Lock (1835), 2 A. & E. 705, 743.

Exceptions

strictness be made the subject either of exception or reservation. It is neither parcel of the thing granted, nor is it issuing out of the thing granted, the former being essential to an exception, and the latter to a reservation (u). From the doctrine that the reservation of an incorporeal hereditament takes effect by way of grant, it follows on the one hand that for the reservation to be effectual the lease must be executed by the lessee (x), and on the other that the benefit of the reservation may enure in favour of a person who is not a party to the lease (y). A reservation in favour of the grantor and his assigns is available for licensees of the grantor, and not only for his assigns in the strict sense (z).

Construction of exception.

The words of an exception are usually construed against the lessor and in favour of the lessee (a). It seems, however, that when a certain number of acres are to be excepted from a lease, without any specification of the particular acres intended to be excepted, the lessor has, before the lease is actually granted, the right to select the acres to be excepted from the lease (b). But if the lease has been actually granted in the terms of the agreement, without specifying the lands excepted, the right of selecting the excepted lands will rest with the tenant (b). The landlord's right of selection must not be exercised oppressively, or in a manner which will make it impossible or difficult for the lessee usefully and advantageously to occupy the rest of the farm (b). Where in a contract of sale there was a reservation of the land necessary for making a railway through the estate to a specified place, the reservation was void for uncertainty, and the contract was not enforceable (c).

(u) Per Tindal, C.J., in Durham, &c., Ry. Co. v. Walker (1842), 2 Q. B. p. 967. As to a reservation of a power to make or to use sewers through the demised premises, see Lee v. Stevenson (1858), E. B. & E. 512; Chadwick v. Marsden (1867), L. R. 2 Ex. 285.

(x) Durham, &c., Ry. Co. v. Walker,

supra.

(y) Wickham v. Hawker (1840), 7 M. & W. 63. ('f. Panneil v. Mill (1846), 3 C. B. 625; and see Houston v. M. of Sligo (1886), 55 L. T. 614; Dynevor v. Tennant (1888), 13 App. Cas. 279. As to the exception of a watercourse, see Doe v. Williams (1848), 11 Q. B. 688, 700; as to the reservation of the free running of

water and soil, see Chadwick v. Marsden (1867), L. R. 2 Ex. 285, 289; as to an exception of "all mosses and turbaries," see Quinn v. Shields (1877), Ir. R. 11 C. L. 254, 264; and as to the implied reservation of an easement of support, see Howarth v. 1rmstrong (1897), 13 T. L. R. 529.

(z) Mitcalfe v. Westaway (1864), 17 C. B. N. S. 658. But see Reynolds v.

Moore, [1898] 2 I. R. 641.

20 Eq. 492.

(a) Shep. Touch. 100; Bullen v. Denning (1826), 5 B. & C. 842, 847, 850; Cardigan v. Armitage (1823), 2 B. & C. 197, 207.

(b) Jenkins v. Green (No. 1) (1858), 27 Beav. 437.

(c) Pearce v. Watts (1875), L. R.

In a recent case (d), the lease of a dairy farm contained a clause Right to sell reserving to the landlord a right to sell any part of the land for sites. "building sites." Purporting to act in exercise of this right, he contracted to sell part of the farm for the site of a small-pox hospital. But it was held that the building sites contemplated by the clause were sites of ordinary dwelling-houses or shops, and that it did not authorize the landlord to sell for such an exceptional purpose as the provision of a hospital site.

An exception of trees does not include fruit trees (e), even Exception of though it is an exception of all timber trees and other trees but not the annual fruit thereof; for the term fruit in legal acceptation is not confined to the produce of those trees which in popular language are called fruit trees, but applies also to the produce of such trees as the oak and walnut (f). Under an exception of all and all manner of timber, &c., wood, underwood, bushes and thorns, other than such bushes and thorns as shall be necessary for the repairs of the fences, all bushes, whether forming part of the fences or not, or necessary for repairs or not, are excepted out of the demise (g). The meaning of the clause is, that there is reserved to the tenant the right of taking all or parts of the thorns or bushes for repairs when required (g).

An exception of woods and underwoods extends to the soil on which the trees grow (h), if there are no expressions showing that it was intended to confine the exception to the trees themselves (i). On the other hand, an exception of all timber trees (k) will comprise only so much of the soil as is sufficient for the vegetation and growth of the trees excepted (1).

When anything is excepted, all things that are depending on it, and are necessary for the obtaining of it, are excepted also (m). Hence, where timber is excepted, the lessor is entitled to enter on the demised premises to show it to intending purchasers, and

(m) Shep. Touch. 100.

⁽d) English v. Tynemouth Corporation (1903), 67 J. P. 239; 1 L. G. R.

⁽e) London v. Southwell (1619), Hob. 303; Wyndham v. Way (1812), 4 Taunt. 316, note (a), p. 318.

⁽f) Per Bayley, J., in Bullen v. Denning (1826), 5 B. & C. 842.

⁽g) Jenney v. Brook (1844), 6 Q. B.

⁽h) Ive v. Sams (1597), Cro. Eliz. 521, 5 Rep. 11 a; Whistler v. Paslow (1619), Cro. Jac. 487; Rolls v. Rock

^{(1729), 2} Selw. N. P. 13th ed. 1244.

⁽i) Legh v. Heald (1830), I B. & Ad. 622; Pincomb v. Thomas (1619), Cro. Jac. 524.

⁽k) See infra, Chap. IV., Sect. 7. (l) Liford's Case (1615), 11 Rep. p. 50 a; Whistler v. Paslow (1619), Cro. Jac. 487. See Legh v. Heald (1830), 1 B. & Ad. 622; 2 Platt on Leases, 42.

he or his vendee may cut the trees down and take them away (n). If the lease is not under seal, the lessor enters for this purpose as licensee of the lessee (o). In the case of a reservation of ornamental timber, where, with the consent of the lessor, the lessee has spent money in improving the grounds, the lessor has been restrained from cutting the timber (p). Where trees and timber are excepted from the lease, the lessee is not, in the absence of an express agreement to that effect, bound to protect the trees and timber from his cattle (q).

Exception of mines and minerals.

In an exception of mines and minerals (r) these terms have their usual meanings (s). The holder of a building lease where minerals are reserved has a right to dig foundations for buildings about to be erected, and dispose of the materials dug out, but not to do so in order to improve the surface as a building site (t).

Under an exception of mines, everything is excepted that is necessary for working them, including way-leave for carrying away the minerals (u); but a reservation of mines and quarries, with full power to win and work the same, does not include the right of so working them as to let the surface down (x). In this respect the exception resembles the ordinary power of working conferred upon a lessee by a mining lease (y). If, therefore, it is intended that the lessor should have this power, the intention should be clearly expressed (z). Perhaps, however, if the excepted minerals are such as cannot be got at all without destroying the surface, the exception will include the right to do so, the person working the mines paying compensation (a).

(n) Shep. Touch. 100; Liford's Case (1615), 11 Rep. p. 52 a; Phillips v. Doyle (1887), 32 Sol. Journ. 11 (Newport (Mon.) County Court), and see this case as to damage caused by negligent removal of trees.

(o) Hewitt v. Isham (1851), 7 Ex.

- (p) Jackson v. Cator (1800), 5 Ves. **688.**
- (q) Clithero v. Higgs (1637), Sir W. Jones, 388; Glenham v. Hanby (1701), 1 Ld. Raym. 739.

(r) As to exceptions in mining

leases, see infra, p. 203.

(s) See infra, p. 199. As to a prehistoric chattel, see Elwes v. Brigg Gas Co. (1886), 33 Ch. D. 562; and as to a custom to take away and sell flints turned up in course of husbandry not being inconsistent with the exception, see Tucker v. Linger (1883), 8 App. Cas. 508.

(t) Robinson v. Milne (1884), 53 L. J. Ch. 1070.

(u) Proud v. Bates (1865), 34 L. J. Ch. p. 411; Cardigan v. Armitage (1823), 2 B. & C. 197, 207.

(x) See the judgment in Proud v. Bates, supra, at p. 412.

(y) See Davis ∇ . Treharne (1881), 6 App. Cas. 460; and infra, p. 200.

(z) See, for cases where the words have been held insufficient, Harris V. Ryding (1839), 5 M. & W. 60; Roberts v. Haines (1856), 6 E. & B. 643; Smart v. Morton (1855), 5 E. & B. 30.

(a) D. of Buccleugh v. Wakefield (1870), L. R. 4 H. L. 377. But see the language of the reservation in that case, and cf. Hert v. Gill (1872). 1. R. 7 Ch. p. 716.

A reservation of a right to work minerals is not equivalent to an exception of the minerals. It is a grant of an incorporeal hereditament, and confers no exclusive right to work the minerals on the grantee—that is, the lessor (b).

An exception of "minerals" only, or of "coal," will not include the space in which the minerals or coal are contained (c), so as to give the lessor any interest in the space left after they have been worked. Hence under these words the lessor will not have the right to carry through such space minerals won from land not specified in the lease (d). But an exception of all "mines" includes not merely the mineral substances, but also the space in which they are contained (e).

THE TERM.

The proper office of the HABENDUM is to restrain the generality Habendum. of the premises (f). It limits and ascertains the estate of the lessee by specifying the time of commencement, and the duration of the interest granted to him (g). But a valid grant in the premises—and a grant without any words of limitation gives an estate for life (h)—is not destroyed by an invalid limitation in the habendum (i); and, generally, the habendum may be controlled by other parts of the instrument, though this requires a strong case, and it must be quite clear that it could not have been the intention of the parties that the lessee should have the land for the term specified in the habendum (k).

The commencement of the term must be ascertained with Commence-

Commencement of term.

(b) Duke of Sutherland v. Heathcote [1892], 1 Ch. 475. See supra, p. 86. (c) See Ramsay v. Blair (1876), 1

(c) See Ramsay v. Blair (1876), 1 App. Cas. 702, 704; Metrop. Dist. Ry. Co. v. Cosh (1880), 13 Ch. D. p. 614.

(d) Ramsay v. Blair, supra, at p. 702. But see Hamilton v. Graham (1871), L. R. 2 Sc. & D. 166.

(e) Proud v. Bates (1865), 34 L. J. Ch. 411; Hamilton v. Graham, supra; Eardley v. Granville (1876), 3 Ch. D. p. 835. See, too, Bowson v. Maclean (1860), 2 D. F. & J. 415, 420.

(f) Burton v. Burclay (1831), 7 Bing. p. 757; Stukeley v. Butler (1615), Hob. pp. 170, 171; Buckler's Case (1597), 2 Rep. 55 b; Doe v. Steele (1843), 4 Q. B. p. 667.

(g) See Bird v. Baker (1858), 1 E.

L.T.

& E. 12.

(h) Co. Litt. 42 a.

(i) Boddington v. Robinson (1875), L. R. 10 Ex. 270.

(k) Strickland v. Maxwell (1834), 2 Cr. & M. p. 549. As to correcting an inconsistency between the habendum and the reddendum by reference to the counterpart, see Burchell v. Clark (1876), 2 C. P. D. 88, 93, 94; and as to rejecting an invalid limitation in the habendum—as an estate for life to begin in futuro—in favour of an estate mentioned in the premises, see Goodtitle v. Gibbs (1826), 5 B. & C. 709; Carter v. Madgwick (1693), 3 Lev. 339; Boddington v. Robinson (1875), L. R. 10 Ex. 270.

certainty (l), but it will be sufficient if the date at which the lease is to commence is capable of being so ascertained at the time when the lease is to take effect in possession, though up to that time the period of commencement may be uncertain (m). Hence the term may be made to commence upon the performance of a condition—e.g. the payment of a sum of money by the lessee to the lessor (n)—or perhaps upon a default in making a payment (o). If a lease be granted for twenty-one years after three lives in being, though it is uncertain at first when the term will commence, because the lives are in being, yet when they die it is reduced to a certainty; and id certum est quod certum redding potest (p).

The term of years granted by a lease may be made to commence either immediately, or from a past (q) or future day. Where an agreement for a yearly letting states the term as commencing on a specified date, as on the 19th May in a given year, this is reckoned as the first day of the term (r), and consequently notice to quit can be given for a subsequent 18th May (r); but where a term begins from a specified date, it lasts during the whole anniversary of that date (s). The effect of the word "from," however, is not uniform, and where leases are made to commence from the day of the date of the instrument of lease, the word "from" is construed to mean either inclusive or exclusive, according to the context and subject-matter, and so as to carry out the intention of the parties and to effectuate their deeds (t).

A lease by deed made to commence from an event which has never happened, or from the date of the deed where the deed has either no date or an impossible date, takes effect from the time of the delivery of the deed (u). Leases to commence from henceforth

- (l) Anon. (1675), 1 Mod. 180.
- (m) Shep. Touch. 272; Co. Litt. 45 b; Bishop of Bath's Case (1606), 6 Rep. 35 a.
 - (n) Bishop of Bath's Case, supra.
- (o) Clowes v. Hughes (1870), L. R. 5 Ex. 160.
- (p) Per Lord Kenyon, C.J., in Goodright v. Richardson (1789), 3 T. R. at p. 463. As to the commencement of a future term where a previous term to which it is postponed is surrendered or forfeited, see Co. Litt. 45 b; Wrottesley v. Adams (1557), Dyer, 177 b, pl. 35;
- Rector of Chedington's Case (1599), 1 Rep. p. 154 b.
- (q) See Enys v. Donnithorne (1761), 2 Burr. 1190.
- (r) Sidebotham v. Holland, [1895] 1 Q. B. 378.
- (s) Ackland v. Lutley (1839), 9 A. & E. p. 894.
- (t) Pugh v. Leeds (1777), 2 Cowp. 714, 717, 725; Doe v. Day (1809), 10 East, 427. See Wilkinson v. Gaston (1846), 9 Q. B. pp. 144, 145.
- (u) Bac. Abr. (L.) 826; Styles v. Wardle (1825), 4 B. & C. 908, 911.

begin from the delivery of the deed, and not from its date (x); and so do leases by deed in which no time is specified for the commencement of the term (y). But it seems that where an agreement not under seal which operates as a present demise states no commencement for the term, this commences from the date (z), unless a different intention appears (a); or, where possession has been taken, from the time of entry (b).

A lease made to begin after the end or determination of a previous lease, where there is no previous lease, or such previous lease has determined or become void, will begin immediately (c). A lease of land which is to begin at the termination of leases of parts of it, the existing leases being for different terms, will commence as to each part so soon as the term in it expires (d).

The habendum of a lease will be construed as taking effect from the time of the execution of the lease, though the duration of the term is to be computed from a prior day (e). Hence the interest of the lessee commences only from the day of the execution of the deed (f). The habendum of the lease can only be considered as marking the duration of the lessee's interest; its operation as a grant is merely prospective (g).

The duration of the lease must also be ascertained either by Duration of the express limitation of the parties at the time of making the lease, or by reference to some collateral or subsequent act or years. event which may with equal certainty measure the continuance thereof (h). A lease for an indefinite term is primâ facie a lease at will (i), but a general letting at a yearly rent usually gives rise to an implied tenancy from year to year (i). A lease for a definite term may be made determinable within the term, as upon the

1. Term of

⁽x) Clayton's Case (1585), 5 Rep. 1. See Steele v. Mart (1825), 4 B. & C. 272, 278; Llewellyn v. Williams (1611), Cro. Jac. 258.

⁽y) Co. Litt. 46 b.

⁽²⁾ Doe v. Benjamin (1839), 9 A. & E. 644.

⁽a) Sandill v. Franklin (1875), L. R. 10 C. P. 377. Cf. Davis v. Jones (1856), 17 C. B. 625; as to executory agreements, see supra, p. 109.

⁽b) Doe v. Matthews (1851), 11 C. B. 675.

⁽r) Co. Litt. 45 b; Bac. Abr. (L.) 829; Miller v. Maynwaring (1635), Cro. Car. 397, 399.

⁽d) Windham's Case (1590), 5 Rep.

⁽e) Per Parke, B., in Jervis v. Tomkinson (1856), 1 H. & N. at p. 206.

⁽f) Jervis v. Tomkinson (1856), 1 H. & N. 195; Shaw v. Kay (1847), 1 Ex. 412; Cooper v. Robinson (1842), 10 M. & W. p. 696.

⁽g) Wyburd v. Tuck (1799), 1 B. & P. 464.

⁽h) Shep. Touch. 274; Co. Litt. 45 b; Bac. Abr. (L. 3) 835; Bishop of Bath's Case (1606), 6 Rep. at pp. 35, 35 a; supra, p. 99. (i) Supra, pp. 92, 93.

L 2

falling of a life (k)—a lease for ninety-nine years if A. so long lives (l)—or upon the lessee ceasing to occupy (m).

A lease which first creates a certain term and then adds a term which is uncertain, is valid for so much as is certain (n). The lease sometimes reserves an option for the lessee to take a further lease for stated periods (o), or provides for the tenancy to continue subject to notice (p). An assignment of the residue of a term which has in fact merged may operate as the creation of a new term for a corresponding period (q).

2. From year to year.

Where it is intended to create an express tenancy from year to year the words of the habendum should be from year to year. A lease for one year certain, and so on from year to year, has been held to contemplate a tenancy for two years at the least (r). A letting not for one year only, but from year to year, enures as a demise for two years at least (s). A lease for a year, or for one year and no longer, creates a tenancy expiring at the end of the year without notice to quit (t).

3. For life.

A lease for life of corporeal hereditaments could not by the common law be made to commence in futuro, because livery of seisin was formerly essential to the creation of an estate of free-hold, and present livery could not be made in respect of a future estate (u); hence a lease to A. habendum from a future date for the life of A. or any other person was void (x), and though livery of seisin is not now necessary, and a freehold estate may be

- (k) Shep. Touch. 274. Cf. Wright v. Cartwright (1757), 1 Burt. 282; and as to evidence of life of cestui que vie, see Kandle v. Lory (1837), 6 A. & E. 218.
- (l) For examples of such limitations, see Daniel v. Waddington Hill (1616), Cro. Jac. 377; Truepenny's Case (1590), cited in Lord Vaux's Case (1593), Cro. Eliz. 269, Co. Litt. 225 a.
- (m) Doe v. Clarke (1807), 8 East, 185; and see Wrenford v. Giles (1599), Cro. Eliz. 643.
- (n) Say v. Smith (1565), Plowden, p. 271; Gwynne v. Mainstone (1828), 3 C. & P. 302.
- (v) See Waring v. King (1841), 8 M. & W. 571; Christy v. Tancred (1840), 7 M. & W. 127.
- (p) Brown v. Trumper (1858), 26 Beav. 11.
 - (q) Cottee v. Richardson (1851), 7

Ex. 143.

- (r) Doe v. Green (1839), 9 A. & E. 658; Doe v. Geekie (1844), 5 Q. B. 811. See Reg. v. Chawton (1841), 1 Q. B. 247; Bac. Abr. (L.) 838.
- (s) Denn v. Cartwright (1803). 4 East, 29, 33; Bac. Abr. (L.) 836; Bishop of Bath's Case (1606), 6 Rep. p. 36 a; but see Harris v. Evans (1756), Amb. 329.
- (t) Cobb v. Stokes (1807), 8 East, 358. See judgment in Messenger v. Armstrong (1785), 1 T. R. at p. 54; also judgment in Right v. Darby (1786), ib. at p. 162.
- (u) Barwick's Cuse (1598), 5 Rep. at p. 94 b; 2 Black. Com. 165. See Greenwood v. Tyber (1620), Cro. Jac. 563; Freeman v. West (1763), 2 Wils. 165.
- (x) Buckler's Case (1597), 2 Rep. 55 b; Hogg v. Crosse (1592), Cro. Eliz. 254.

created by deed (y), yet the rule still holds. Inasmuch, however, as a use may be limited in futuro, a lease for life may be made to commence at a future day by limitations operating under the Statute of Uses, as, for instance, where the lease is made in pursuance of a power to lease (z).

A lease for term of life, without mentioning for whose life, is deemed to be for the life of the lessee; but if the lessor might lawfully grant a lease for the term of his own life, but not for the term of the life of the lessee, such a lease will be taken to be for the former term (a). A lease made to A. during the life of B. and C. will continue during the life of the survivor (b); but a lease for a term of years if A. and B. shall so long live will determine on the death of one of them (b). A lease for the lives of A., B. and C., where C. is not in being, is good for the lives of A. and B. (c).

A yearly letting with a provision that the lessee shall not be Letting to disturbed so long as the rent is duly paid (d), is equivalent to a continue while rent lease for the life of the lessee, and is void at law unless made by paid. deed (e). But in Ireland it is otherwise, since a freehold interest can be created by note in writing signed by the lessor (f). And where the lessee of a shop, whose term was to expire at Midsummer, 1901, let the shop early in 1900 to A., under an informal memorandum in writing, whereby he accepted A. as tenant "at the rental of 7s. per week, the rent not to be raised during my present tenancy," that was held by the Court of Appeal to constitute a valid contract for a tenancy for a definite term, viz., until Midsummer, 1901 (g). Where, however, the demise, by a written instrument not under seal, was from year

⁽y) 8 & 9 Vict. c. 106, s. 2; supra, p. 131.

⁽z) 1 Sanders on Uses, 5th ed. 142; 1 Platt on Leases, 692.

⁽a) Co. Litt. 42 a. For effect of a demise by A. to B. for the term of his life, see per Taunton, J., in Doe v. Dodd (1833), 5 B. & Ad. p. 693.

⁽b) Brudnel's Case (1593), 5 Rep. 9 a. Bac. Abr. 842; Hughes and Crowther's Case (1610), 13 Rep. 66. See Doe v. Smith (1805), 6 East, 530. (c) Doe v. Edwards (1836), 1 M. & W. 553; and see Coutes v.

Collins (1871), L. R. 7 Q. B. 144. (d) Where the tenant is in possession and the landlord agrees not to

raise his rent, such agreement is personal and will not bind a purchaser without notice: Roberts v. Tregaskis (1878), 38 L. T. 176.

⁽e) Doe v. Browne (1807), 8 East, 165; Browne v. Warner (1807), 14 Ves. 156, 409; Cheshire Lines Committee v. Lewis (1880), 50 L. J. Q. B. 121 (see the observations of Brett, L.J., as to specific performance in such a case).

⁽f) Landlord and Tenant Law Amendment Act, Ireland, 1860 (23 & 24 Vict. c. 154), s. 4; Wood v. Davis (1880), 6 L. R. Ir. 50.

⁽g) Adams v. Cairns (1901), 85 L. T. 10.

to year so long as the rent should be paid, and as the lessor should have power to let the premises, it was held that the instrument was void as a lease, on the ground of uncertainty, and also on the ground that it ought to have been under seal (h).

Executory agreement.

Where there is no present demise, but simply an executory agreement under which the lessee is to have a lease, and is not to be disturbed so long as the rent is paid, the rule is different, and in equity the lessee is entitled to a life tenancy, subject to payment of rent (i), or for so long as the lessor's interest permits (i). In a recent case (k) the Court of Appeal held that an informal document which, not being a deed, could not operate as a present demise to the defendant for his life, might be construed as an agreement to grant a lease for his life, which he was entitled to have specifically performed. Where the lessor has a leasehold interest, the lessee is entitled to an underlease for the residue of the term less one day, should he so long live (l).

RESERVATION OF RENT.

Reddendum.

The REDDENDUM (m) fixes the amount and kind of recompense to be paid by the lessee to the lessor for the possession of the demised premises, and usually specifies the periods at which such recompense is to be paid or rendered.

Distress is a necessary incident to rent, and rent can only be reserved out of lands or tenements whereto the lessor may have recourse to distrain (n). Hence it cannot be reserved out of incorporeal hereditaments (n). The rent reserved for the whole land becomes due out of every part of it (o). On one lease several yearly rents may be reserved (p).

No special form of words is essential for reservation of rent. A proviso (q), or a covenant (r), may constitute a good reservation,

- (h) Wood v. Beard (1876), 2 Ex. D. 30.
- (i) Re King's Leasehold Estates (1873), L. R. 16 Eq. 521; Mardell v. Curtis (1899), 43 Sol. Journ. 587, (1899) W. N. 93.
- (k) Zimbler v. Abrahams, [1903] 1 K. B. 577, 583.
- (l) Kusel v. Watson (1879), 11 Ch. D. 129.
- (m) Co. Litt. 142 a. As to the effect of a memorandum added to the lease allowing a deduction from the rent, see *Davies* v. Stacey (1840),
- 12 A. & E. 506; and as to the reddendum in mining leases, see infra, p. 203.

(n) Co. Litt. 47 a.

- (o) Curtis v. Spitty (1835), 1 Bing. N. C. p. 760; Hargrave v. Shewin (1826), 6 B. & C. 34.
- (p) Knight's Case (1588), 5 Rep. 54 b.
- (q) Harrington v. Wise (1597), Cro. Eliz. 486.
- (r) Drake v. Munday (1631), Cro. Car. 207.

and a letting at and under the rent of 80l. is an agreement by the tenant to pay that rent(s). Under the words yielding and paying or rendering a covenant for payment of the rent is implied (t).

Rent may be made payable in advance, but in that case the Rent payable reddendum should state expressly that the rent is so payable from time to time, or during the term, in advance, or the stipulation for payment in advance may be held to relate to the first quarter's And sometimes it may be advisable to make the last quarter's or half-year's rent payable in advance, so as to enable the lessor to distrain for it before the expiration of the lease (x).

The times of payment of the rent—i.e., quarterly or halfyearly—should be mentioned in the reddendum. If no times of payment are specified, the rent will be payable at the end of the The days of payment should also be specified, and the day first mentioned should be that on which the first payment of rent is to be made (z); but although this is not so, the first payment will nevertheless be deemed to become due on such one of the days specified as first occurs (a). Rent reserved payable half-yearly or quarterly, without mention of the days of payment, will be payable in equal portions on half-yearly or quarterly days computed from the commencement of the term (b).

The amount of the rent must be either expressly stated, or Certainty otherwise rendered capable of being ascertained with certainty (c); and it is certain if by calculation and on the happening of certain events it becomes certain (d). Thus a man may hold of his lord to shear all the sheep depasturing within his lord's manor; and this is certain enough, although the lord has sometimes a great, and sometimes a small number there (e). A royalty of so much quarterly per solid yard for marl got, and so much per thousand

in advance.

Times of

as to amount

```
(s) Doe v. Kneller (1829), 4 C. & P.
```

Tyr. & Gr. 819; Collett v. Curling (1847), 10 Q. B. 785.

(z) See Hutchins v. Scott (1837), 2 M. & W. 809.

(a) Hill v. Grange (1557), Plowd. p. 171; Co. Litt. 217 b.

(b) Tomkins v. Pinsent (1702), 2 Ld. Raym. 819. See Harrington v. Wise (1597), 2 Roll. Abr. 450.

(c) Co. Litt. 142 a. See Parker v.

Harris (1693), 1 Salk. 262.

(d) Per Brett, L.J., in Ex parte Voisey (1882), 21 Ch. D. p. 458.

(e) Co. Litt. 96 a.

⁽¹⁾ Iggulden v. May (1804), 9 Ves. at p. 330; Giles v. Hooper (1691), Carth. 135; Hellier v. Casbard (1666), 1 Sid. 266; Porter v. Swetnam (1654), Styles, 406.

⁽u) See Holland v. Palser (1817), 2 Stark. 161; Hopkins v. Helmore (1838), 8 A. & E. 463.

⁽x) Witty v. Williams (1864), 12 W. R. 755.

⁽y) Cole v. Sury (1627), Latch. 264; Coomber v. Howard (1845), 1 C. B. 440; Turner v. Allday (1836),

for all bricks made by the tenant, is a rent capable of being ascertained with certainty (f). A rent varying with the price of wheat, such price to be ascertained in a specified manner, is good (g); and so is a rent of part of a room with steam power, subject to deduction at the rate of the rent for the days when the steam power is not available (h).

Mode of reservation.

The rent, if reserved to any specified person, should be reserved to the person who leases (i) or purports to lease (k) the land out of which it issues, and not to a stranger; but though rent reserved to a stranger does not go with the reversion and cannot be distrained for, the reservation is good by way of contract (l). It has been said that the law will use all the industry imaginable to conform the reservation to the estate (m). Hence a reservation to the lessor, entitled in fee, his heirs, executors, and assigns, will not prevent the rent from following the reversion and going to the heir (n).

But the most clear and sure mode of reservation is to reserve rent yearly during the term, and leave the law to make the distribution, without an express reservation to any person (o), and now under sect. 10 of the Conveyancing Act, 1881, rent reserved by a lease goes with the reversionary estate in the land (p). A reservation of rent to the lessor only, or to the lessor, his executors, and assigns, not mentioning his heirs, will enure only during the life of the lessor (q), unless the reservation be expressly to the lessor during the term, in which case rent will continue payable to the end of the term (r).

"Net rent."

A stipulation for a net rent means a rent clear of all deductions (s): hence the tenant under a lease containing this reservation will be liable to pay land tax and sewers rates (s).

(f) Daniel v. Gracie (1844), 6 Q. B. 145. See Watson v. Waud (1853), 8 Ex. at p. 339.

(g) Kendall v. Baker (1852), 11 C. B. 842.

(h) Selby v. Greaves (1868), L. R. 3 C. P. 594.

(i) Co. Litt. 143 b, Litt. sect. 346; Oates v. Frith (1615), Hob. 130. See Cole v. Sury (1627), Latch. 264.

(k) As to leases by estoppel, see

supra, p. 74.

(1) Jewel's Case (1587), 5 Rep. 3 a.

See Deering v. Farrington (1674), 1

Mod. 113.

(m) See the judgment in Sacheverell

v. Froggatt (1671), 1 Vent. at p. 162.
(n) Drake v. Munday (1631), Cro.
Car. 207. See Sacheverell v. Froggatt,
2 Wms. Saund. 367 a. And see supra,
p. 61, as to real representatives.

(o) Whitlock's Case (1609), 8 Rep. at p. 71 a.

(p) Infra, Chap. V., Sect. 1(3). Cf. Beer v. Beer (1852), 12 C. B. 60.

(q) Co. Litt. 47 a; Wooton v. Edwin (1608), 12 Rep. 36.

(r) Sacheverell v. Froggatt, 2 Wms. Saund. 367 a.

(s) See the judgment of Lord Tenterden, C.J., in *Bennett* v. Womack (1828), 7 B. & C. at p. 629, 3 C. & P.

COVENANTS.

A covenant is nothing more than an agreement of the parties Covenant, under seal (t). Hence, in order to constitute a covenant, no how constituted. technical language is necessary (u); any words in a deed which show an agreement to do or not to do a thing amount to a covenant (x). A recital (y), or an exception (z), may constitute a covenant, if there can be collected from it an agreement that a thing should be done or should not be done (a). And a covenant may be implied from the provisions of the lease, if this is necessary in order to secure for them full effect (b). Where, for instance, the landlord of a block of flats has let them out on leases, each containing a covenant by the tenant to use his flat for residential purposes only, but without any express corresponding covenant by the landlord as to the use of the flats, a covenant by the landlord that the flats shall be used for residential purposes only may be implied (c). Every obligation which, on the fair construction of the language of a deed, is clearly imposed on one of the parties is equivalent to an express covenant by him to perform that obligation (d).

An express covenant for payment of rent is always inserted in Covenant for leases by deed, the advantage of its insertion being that, unlike payment of rent. the implied covenant (e) arising from the words "yielding and paying," it binds the lessee to pay rent, although he does not enter, and, after he has assigned the lease, renders him, as well as the assignee, liable for payment of rent (f). If it is agreed that the rent shall cease to be payable, or shall be suspended, in

96; Bradbury v. Wright (1781), 2 Dougl. 624; Giles v. Hooper (1691), Carth. 135. See, too, infra, p. 155. (t) Per Lord Ellenborough, U.J., in Randall v. Lynch (1810), 12 East, at p. 182. Cf. Hayne v. Cummings

(1864), 16 C. B. N. S. p. 426.

(u) Brookes v. Drysdale (1877), 3 C. P. D. p. 58; Wolveridge v. Steward (1833), 1 Cr. & M. p. 657; Wood v. Copper Miners' Co. (1849), 7 C. B. 906; Lant v. Norris (1757), 1 Burr. 287, 290. See also Saltoun v. Houstoun (1824), 1 Bing. at p. 440.

(x) Easterby v. Sumpson (1830), 6 Bing. 644, 650, 9 B. & C. 505; Sterinson's Case (1589), 1 Leon. 324, 12 East, 182, note (a); Hollis v. Carr (1677), 2 Mod. 87; Duke of St. Albans v. Ellis (1812), 16 East, 352; Cannock v. Jones (1849), 3 Ex. 233.

(y) Sampson v. Easterby (1830), 9 B. & C. 505, 6 Bing. 644; Farrall v. Hilditch (1859), 5 C. B. N. S. 840; Lay v. Mottram (1865), 19 C.B. N.S. 479.

(z) D. of St. Albans v. Ellis, supra.

(a) D. of St. Albans v. Ellis, supra, at p. 355.

(b) As to a covenant to burn lime being implied from a covenant to supply lime at certain seasons, see Earl of Shrewsbury v. Gould (1819), 2 B. & A. 487. Cf. Doe v. Guest (1846), 15 M. & W. 160.

(c) Gedge v. Bartlett, C. A. (1900),

17 T. L. R. 43.

(d) Per Rigby, L.J., in Re Cadogan Estate, Lim. (1895), 73 L. T. p. 390.

(e) Supra, p. 151.

(f) Infra, Chap. V., Sect. 1 (4).

case the demised premises shall be burnt down, or shall become uninhabitable, an express exception or provision to that effect should be inserted in the covenant for payment of rent. An exception of damage by fire contained in the covenant to repair does not limit the operation of the covenant for payment of rent (g).

" Usual covenants" (h).

Where an agreement for a lease specifies only the essential terms above mentioned (i), and either mentions no other terms, or provides that the lease shall contain the "usual provisions" (k), the parties are entitled to have inserted in the lease made in pursuance of the agreement such other provisions as are usual in leases of property of the same character as that agreed to be leased (l), and in the same district (m), not being provisions which tend to abridge or qualify the legal incidents of the estate agreed to be granted to the lessee (n). Since a covenant against assigning or underletting without consent (o), and a proviso for re-entry for breach of any of the covenants in the lease, or upon bankruptcy of the lessee (p), tend to abridge or qualify the legal incidents of the estate agreed to be granted to the lessee, the lessor cannot, in the absence of express stipulation in the agreement for a lease, require the insertion in the lease of either of those provisions.

The question whether a provision is usual is one of fact (q), to be decided either upon an examination of the provisions contained in the leading books of precedents (q), or from the evidence of

(g) Hare v. Groves (1796), 3 Anst. 687. See infra, p. 235.

(h) See articles in 27 Sol. Journ. pp. 129, 142, 159, 177, and letter at p. 211; and as to clauses in mining leases which are, and are not, usual, see *infra*, pp. 206, 207.

(i) Supra, p. 108.

(k) The same construction is adopted in both these cases. See Church v. Brown (1808), 15 Ves. p. 271; but see Colhoun v. Trustees of Foyle College (1898), 1 I. R. 233.

(l) See Bennett v. Womack (1828), 7 B. & C. 627; Hampshire v. Wickens

(1878), 7 C. D. at p. 561.

(m) Church v. Brown (1808), 15 Ves. p. 267; Wilbraham v. Livesey (1854), 18 Beav. p. 210; Strelley v. Pearson (1880), 15 Ch. D. 113. See, too, Hodgkinson v. Crowe (1875), L. R. 19 Eq. 591.

(n) Church v. Brown (1808), 15 Ves. pp. 264, 265; Blakesley v. Whieldon (1841), 1 Hare, 176. The observations of Lord Eldon in Church v. Brown were cited and approved in Hodgkinson v. Crowe (1875), L. R. 10 Ch. p. 625.

(o) Henderson v. Hay (1792), 3 Bro. C. C. 632; Church v. Brown (1808), 15 Ves. 258; Hodgkinson v. Crowe (1875), L. R. 19 Eq. 591; Hampshire v. Wickens (1878), 7 Ch. D.

555.

(p) Hodgkinson v. Crowe (1875), L. R. 19 Eq. 591; 10 Ch. 622. It was held, however, before this decision of the Court of Appeal, that a proviso for re-entry if any business but that of a licensed victualler was carried on (Bennett v. Womack (1828), 7 B. & C. 627), or on bankruptcy (Haines v. Burnett (1859), 27 Beav. 500), was usual in leases of publichouses.

(q) Hampshire v. Wickens (1878). 7 Ch. D. 555; Brookes v. Drysdale

witnesses familiar with the usual contents of leases of the description of that agreed to be granted (r). This being so, it is obvious that the "usual provisions" of a lease may vary in different generations (s), and the older decisions on this subject may not afford a trustworthy guide at the present day. The Instances following provisions may probably be considered to be usual:—

provisions.

Covenant by lessee to pay rent (t).

Covenant by lessee to pay taxes, except such as are ultimately charged by the Legislature on the landlord (u). A covenant by the lessee to pay "land tax, sewers rate, and all taxes," is usual in a lease reserving a net rent (x). the custom of the district under an agreement for the lease of a farm "on the usual terms," the land tax may (and formerly the tithe rent charge might) fall on the tenant (y).

Covenant by lessee to keep and deliver up premises in repair (z). Provision in a lease of buildings enabling the lessor to enter and view the state of repair (a).

Proviso for re-entry on non-payment of rent (b).

The usual qualified covenant by the lessor for quiet enjoyment(c).

In cases of leases of particular kinds of property other provisions may be required to be inserted (d). Thus in an agricultural lease such covenants as to cultivation as are usually

(1877), 3 C. P. D. 52. The question seems to have been formerly considered one of law. See Henderson v. Hay (1792), 3 Bro. C. C. 632.

(r) As in Hodgkinson v. Crowe (1875), L. R. 19 Eq. 591. See Hart v. Hart (1881), 18 Ch. D. 670, where conveyancers were called to speak to the usual practice.

(8) Hampshire v. Wickens (1878),

7 Ch. D. p. 561.

(t) See Taylor v. Horde (1757), 1 Burr. p. 125; 5 Dav. Prec. 3rd ed. Part I. p. 53; 3 Byth. & Jarm. 4th ed. by Robbins, p. 117.

(u) 5 Dav. Prec. Part I. p. 53; 3 Byth. & Jarm. 4th ed. p. 117.

(x) Bennett v. Womack (1828), 7 B. & C. 627; 3 C. & P. 96.

(y) See Parish v. Sleeman (1860),

1 D. F. & J. pp. 328, 332.

(z) Sharp v. Milligan (No. 2) (1857), 23 Beav. p. 422; Doe v. Withers (1831), ² B. & Ad. p. 903. Apparently the

words "reasonable wear and tear excepted "cannot be required to be inserted as a usual provision at the end of this covenant: 27 Sol. Journ. p. 177.

(a) 5 Day. Prec. Part I. p. 53, cited by Jessel, M.R., in Hampshire v. Wickens, 7 Ch. D. p. 561.

(b) See Hodykinson ∇ . Crowe (1875),

L. R. 10 Ch. p. 626.

(c) Hampshire v. Wickens (1878), 7 Ch. D. p. 561. See Hall v. City of London Brewery Co. (1862), 31 L. J. Q. B. 257. As to covenants for title in Ireland, where special provision for such covenants exists under the Landlord and Tenant Law Amendment Act, Ireland, 1860 (23 & 24 Vict. c. 154), see ('olhoun v. Trustees of Foyle College (1898), 1 L R. 233.

(d) As to usual provisions in mining leases, see infra, p. 206.

inserted in leases of land in the neighbourhood may be required. In such a lease a covenant not to mow meadow land more than once a year seems to be a usual covenant (e). No doubt also a reservation of an additional rent for every acre of old pasture land ploughed up may be required to be inserted, since such a reservation is certainly usual, and as it only enforces the lessee's duty to abstain from committing waste, it does not qualify or abridge the legal incidents of the estate agreed to be granted to the lessee. So, again, in relation to leases of public-houses it has been said that the "usual covenants" mean the covenants always inserted in such leases (f).

Provisions which are not usual.

The following provisions have been held not to be usual:—
Proviso suspending payment of rent in case the premises are destroyed by fire or tempest (q).

Exception from the covenant to repair of damage by fire or tempest (h); and even though this exception is admitted by the lessor, the lessee cannot add the words "or other casualty," these being uncertain (i).

Covenant by lessee to rebuild and repair (k).

COVENANT by lessee not to assign or underlet without licence (l). The reason why such covenants are not inserted, unless expressly stipulated for by a lessor, has been already stated (m). The fact that the subject-matter of the lease is a public-house (n) makes no difference.

Condition that any underlease or deed of assignment of the lease shall be registered with the lessor's solicitor, and a fee paid to him (o).

COVENANT by the lessee not to exercise a particular trade upon the demised premises (p), at all events where the premises are in a neighbourhood where trade is usually

(e) See Hyde v. Warden (1877), 3 Ex. D. p. 82.

(f) Humpshire v. Wickens (1878), 7 Ch. D. p. 561. See Bennett v. Womack (1828), 7 B. & C. 627, and note (p), p. 154, supra.

(g) Doe v. Sandham (1787), 1 T. R. 705.

- (h) Sharp v. Milligan (No. 2) (1857), 23 Beav. 419; Kendall v. Hill (1860), 6 Jur. N. S. 968.
- (i) Crosse v. Morgan (1889), 60 L. T. 703.
- (k) Doe v. Withers (1831), 2 B. & Ad. p. 903.
- (l) Henderson v. Hay (1792), 3 Bro. C. C. 632; Church v. Brown (1808). 15 Ves. 528; Hampshire v. Wickens (1878), 7 Ch. D. 555; Buckland v. Papillon (1866), L. R. 1 Eq. p. 482, 2 Ch. p. 71; Bishop v. Taylor (1891), 60 L. J. Q. B. 556.

(m) Supra, p. 154, n. (o).

- (n) Re Lander and Bayley's Contract, [1892] 3 Ch. 41.
- (o) Brookes v. Drysdale (1877), 3 C. P. D. 52.
- (p) Propert v. Parker (1832), 3 My. & K. 280. See Van v. Corpe (1834), ib. 269.

carried on (q). But in a lease of a public-house a covenant against carrying on any trade except that of a licensed victualler or beerhouse keeper is usual (r). It has been thought that in localities where trade is not carried on the insertion of a covenant against converting the house demised into a shop might perhaps be insisted on (q).

Covenant by a lessee to carry on a particular trade on the premises (s), except in the case of a lease of a publichouse (t).

Covenant by the lessee in a lease of a public-house to reside on the premises and personally conduct the business (u).

Covenant by the lessee to insure (u).

Covenant that in case the demised premises shall be blown down or burned, the lessor shall rebuild, or otherwise the tenant shall be at liberty to quit (x).

Proviso for re-entry on breach of any covenant (y). rule on this head has not been altered by sect. 14 of the Conveyancing Act, 1881 (z).

A proviso for re-entry in case the lessee shall become bankrupt or make any composition with his creditors or if execution should issue against him is, it seems, unusual and unreasonable (a).

An agreement for a lease to contain "proper covenants" "Proper justifies the insertion only of such covenants as are calculated covenants." to secure the full effect of the contract (b), and ordinarily a covenant against assignment or underletting will not be included (c).

The question what are usual and proper covenants can be determined on a summons under the Vendor and Purchaser Act, 1874(z).

(q) Wilbraham v. Livesey (1854), 18 Beav. p. 210.

(r) See Bennett v. Womack (1828), 7 B. & C. 627.

- (*) Due v. Guest (1846), 15 M. & W. 160.
- (t) See supra, p. 154, n. (p). (u) This seems to have been admitted to be unusual in Cosser v. Collinge (1832), 3 My. & K. 283. See also 5 Dav. Prec 3rd ed. Part I. p. 53, note. In practice however, a lessee of insurable buildings very commonly covenants to insure them, or to recoup to the lessor the expense

of insuring them.

- (x) Doe \forall . Sandham (1787), 1 T. R. 705; Medwin v. Sandham (1789), 3 Swanst. 685.
- (y) Hodykinson v. Crowe (1875), L. R. 10 Ch. 622.
- (z) Re Anderton and Milner's Contract (1890), 45 Ch. D. 476.
- (a) Hyde v. Warden (1877), 3 Ex. D. p. 82; Hodgkinson v. Crowe (1875), L. R. 19 Eq. 591.
- (b) Jones v. Jones (1806), 12 Ves. 186.
- (c) Eadie v. Addison (1882), 52 L. J. Ch. 80.

General principle of construction of written instruments. It is a general principle of construction that a written instrument, if it is plain and unambiguous, must be construed according to the plain and unambiguous language of the instrument itself. And, in such a case, even the fact that the parties have for many years interpreted the language in a sense different from that which it plainly bears cannot affect the construction of the instrument (d).

Construction of covenants.

But, of course, in such an instrument as a lease, every covenant is to be expounded with a regard to its context, and such exposition must be upon the whole instrument, ex antecedentibus et consequentibus, and according to the reasonable sense and construction of the words (e). Hence, if a man acts contrary to the intention of his covenant, a breach will be committed, although he literally performs it; as, for instance, if a man covenants to leave all the trees upon the land, and he cuts them down and leaves them there (f). If the meaning of the words of a covenant be doubtful, such construction will be made as is most strong against the covenantor (g). The Court, however, will not construe a covenant as giving a lessor the power to derogate from his own grant, if the words used are fairly capable of another construction (h).

Whether dependent or independent.

When two parties enter into mutual covenants such covenants may be either dependent or independent. When the covenants are independent, each party may sue upon the covenant of the other without any reference to the question whether he has performed his own covenant; when the covenants are dependent, the performance of his own covenant will be treated as a condition precedent to his right to sue upon the covenant of the other.

Covenants are to be construed as dependent or independent, according to the fair intention of the parties, to be collected from the instrument, and technical words should give way to that intention (i). As furnishing a guide to the discovery of

to make roads on a building estate, see Mason v. Cole (1849), 4 Ex. 375.

(h) White v. Harrow (1902), 18

T. L. R. at p. 229.

(i) See judgment of Lord Kenyon,

⁽d) See per Lord Halsbury in North Eastern Ry. Co. v. Lord Hastings, [1900] A. C. 260, at p. 263, referring to Clifton v. Walmesley (1794), 5 T. R. 564.

⁽e) Per Lord Ellenborough, C.J., in *Iggulden* v. May (1806), 7 East, at p. 241.

⁽f) Com. Dig. Covenant (E. 2). As to the construction of a covenant

⁽g) Bac. Abr. Covenant (F.); judgment in Doe v. Stevens (1832), 3 B. & Ad. at p. 303; Love v. Pares (1810), 13 East, p. 87. See Rhodes v. Bullard (1806), 7 East, 116.

the intention of the parties (k), it has been laid down that where a covenant goes only to part of the consideration on both sides, and a breach of such covenant may be paid for in damages, it is an independent covenant (1).

As a general rule covenants are to be treated as independent rather than as conditions precedent, especially where some benefit has been derived by the covenantor (m). And the covenants are independent when some of the stipulations on one side are not to be performed till the covenant on the other side is exhausted (n).

Where there is a power for the lessee to put an end to the Conditions lease by notice (all arrears of rent being paid and all the covenants on his part being performed), it is conceived that, though the House of Lords has been equally divided on the question, the performance of the covenants is a condition precedent to the right to determine the lease (o). It has been held that, where there is a covenant for renewal of the lease in case the lessee's covenants have been duly performed, the performance of the covenants is a condition precedent to renewal (p). the covenant for quiet enjoyment is independent of the covenants for payment of rent and to repair (q). Where a sub-lessor covenants to indemnify his sub-lessee against non-payment of the head-rent, payment by the sub-lessee of his own rent is not a condition precedent (r).

Covenants entered into with several persons will be construed Whetherjoint as joint or several according as the interest of the parties is

or several.

C.J., in Porter v. Shephard (1796), 6 T. R. at p. 668 (speaking of conditions precedent and subsequent); judgment of Lord Chelmsford in Roberts v. Brett (1865), 11 H. L. C. p. 354.

(k) Per Lord Chelmsford, 11 H. L. C. p. 354.

(1) Boone v. Eyre (1777), 1 H. Bl. 273, note (a); St. Albans v. Shore (1789), ib. 270; notes to Pordage v. Tole (1669), 1 Wms. Saund. 320 b; Carpenter v. Cresswell (1827), 4 Bing. 409, 411. See Baggallay v. Pettit (1859), 5 C. B. N. S. 637. See also infra, Chap. IV., Sect. 2 (2).

(m) Newson v. Smythies (1858), 3 II. & N. p. 843, per Pollock, C.B.

(u) Newson v. Smythies, 3 H. & N. **240**.

- (o) Grey v. Friar (1854), 4 H. L. C. 565; Porter v. Shephard (1796), 6 T. R. 665.
- (p) Finch v. Underwood (1876), 2 Ch. D. 310; Bastin ∇ . Bidwell (1881), 18 Ch. D. 238.
- (q) Dawson v. Dyer (1833), 5 B. & Ad. 584; Edge v. Boileau (1885), 16 Q. B. D. 117.
- (r) Briant v. Pilcher (1855), 16 C. B. 354. See further as to conditions precedent, Doe v. Kennard (1848), 12 Q. B. 244; Baggallay v. Pettit (1859), 5 C. B. N. S. 637; and as to valuation being a condition precedent, Babbage v. Coulburn (1882), 9 Q. B. D. 235, affirmed 52 L. J. Q. B. 50; Scott v. Avery (1856), 5 H. L. C. 811; Dawson v. Fitzgerald (1876), 1 Ex. D. 257.

precedent.

joint (s), or several (t), if the words of the covenant are capable of such a construction; but this rule will give way to the expressed intention of the parties that the covenants shall be joint or several (u). Words showing that a covenant is meant to be joint and several may govern the construction of subsequent covenants (x).

In a lease to G. and A., their executors, administrators, and assigns, as tenants in common and not as joint tenants, there were covenants by G. and A. for themselves, their executors, administrators, and assigns, that they or some or one of their executors, administrators, or assigns would pay the rent and keep the premises in repair. It was held that these covenants were joint, although the tenancy was in common (y); and they are clearly joint where the tenancy is joint (z). A covenant with two persons and every of them is joint although the two are several parties to the deed (a). A covenant by two joint lessees, if it be joint and several, binds the representatives of a deceased lessee (b).

Parties to actions upon covenants.

It has been held, that where a demise is joint, and the covenants upon which an action is brought are entire, and are made with both the lessors, the cause of action is joint, and both of the covenantees ought to sue, though as between themselves their interests may be separate (c). Hence the benefit of a covenant to repair in a joint lease made by tenants in common will run with the entire reversion, and the representatives of all the tenants in common must join in suing for a breach of such covenant (d). But where the covenant is originally with a single lessor, and the reversion devolves upon several as tenants in

(s) See Pugh v. Stringfield (1857), 3 C. B. N. S. 2; Bradburne v. Botfield (1845), 14 M. & W. 559.

(t) See Withers v. Bircham (1824), 3 B. & C. 254; Servante v. James (1829), 10 B. & C. 410; James v. Emery (1818), 8 Taunt. 245.

(u) Shep. Touchst. 166; per Parke, B., in Sorsbie v. Park (1843), 12 M. & W. at p. 158; Bradburne v. Botfield (1845), 14 M. & W. 559, 572; Keightley v. Watson (1849), 3 Ex. 716, 722. See Slingsby's Case (1589), 5 Rep. 18 a; Eccleston v. Clipsham (1668), 1 Wms. Saund. 153; Anderson v. Martindale (1801), 1 East, 497. (x) D. of Northumberland v. Erring-

ton (1794), 5 T. R. 522; Copland v. Laporte (1835), 3 A. & E. 517.

(y) White v. Tyndall (1888), 13 App. Cas. 263.

(z) Levy v. Sale (1877), 37 L. T. 709.

(a) Southcote v. Hoare (1810), 3 Taunt. 87.

(b) Enys v. Donnithorne (1761), 2 Burr. 1190; Burns v. Bryan (1887), 12 App. Cas. 184.

(c) Per Lord Denman, C.J., in Foley v. Addenbrooke (1843), 4 Q. B. at p. 207.

(d) Thompson v. Hakewill (1865), 19 C. B. N. S. 713.

common, any one can sue for a breach of the covenant without joining the rest (e). In an action against five defendants who were jointly and severally liable as assignees of a lease, it was held not to be necessary to join the trustees of two defendants who were bankrupt (f). Under sect. 60 of the Conveyancing Act, 1881 (g), the benefit of a covenant made after 31st December, 1881, with two or more jointly, devolves, if a contrary intention is not expressed, on the survivor.

Where a tenant for life has granted a lease under the Settled Lease granted Land Act, 1882, containing a covenant to repair, the settled estate under S. L. Act, 1882. will be entitled to the benefit of any damages recoverable in respect of a breach of the covenant; and accordingly the trustees of the settlement are entitled to be joined as co-plaintiffs with the tenant for life in an action on the covenant, and a set-off which the defendant may have against the tenant for life in his individual capacity will not be available as against the trustees (h).

Before the Conveyancing Act, 1881, came into operation, it Where assigns was desirable, where it was intended that the liability to perform the covenants in the lease should pass with the land to an assignee of the lease, that the lessee should be expressed to covenant for himself and his assigns; for though some covenants would bind assigns though not named, and others would not bind them though named, yet as there was a middle class in which the assigns were bound if named, and not otherwise, it was prudent to provide for the possibility of a covenant being held to belong to this class (i). The provisions of the Conveyancing Act, 1881, annex to the reversion in the case of leases made after 31st December, 1881, the benefit of the lessee's covenants having reference to the subject-matter of the lease (k), and the obligation of the lessor's covenants with reference to the same subject-matter (l); and under sect. 58 of the same Act covenants relating to land of inheritance or to land not of inheritance are to be deemed to be made respectively with the covenantee, his heirs, and assigns, or with the covenantee, his executors, administrators, and assigns. But these provisions do

L.T.

⁽e) Roberts v. Holland, [1893] 1 Q. B. 665. (f) Lloyd v. Dimmack (1877), 7

Ch. D. 398. (g) 44 & 45 Vict. c. 41.

⁽h) Mitchell v. Armstrong (1901),

¹⁷ T. L. R. 495.

⁽i) 4 Jarm. Conv. by Sweet, 428. See infra, Chap. V., Sect. 1 (4).

⁽k) 44 & 45 Vict. c. 41, s. 10; infra, Chap. V., Sect. 1 (5).

⁽l) Sect. 11.

not touch the case of the burden of the lessee's covenants, and it is still necessary for all covenants by the lessee relating to land, where the burden is intended to run with the land, to be made by the covenantor for himself and his assigns (m).

Difficulty or impossibility of performance.

Where there is a positive contract to do a thing not in itself unlawful, difficulty or even impossibility of performance is no excuse for a breach (n). But this rule is only applicable where the contract is positive and absolute, and not subject to any condition either express or implied. The law may import, for instance, into a contract to let rooms on the route of a procession an implied condition that the procession will take place; with the result of excusing the tenant, in the event of the non-fulfilment of the condition, from any further or subsequent performance of his part of the contract (o). Again, the rule applies only where the event which causes the impossibility could have been foreseen, or where the impossibility arises from the act or default of the promisor. Hence a covenant by the lessee for himself and his assigns not to build on the demised land will be discharged upon a compulsory assignment to a railway company (p). And a covenant is not binding on the lessee where the lessor is himself the cause of making it impossible for the lessee to observe it (q).

But where a contract for letting a theatre contained a clause rendering it null and void in the event of the theatre being closed for any one of several specified reasons, and, without any default on the lessor's part, the theatre had to be closed for another unspecified reason, he was held liable in damages for breach of contract (r).

ancing Acts, 8th ed. p. 117.

(n) Taylor ∇ . Caldwell (1863), 3 B. & S. 826. It is not essential to the application of the principle of that case that the direct subject-matter of the contract should perish, or fail to be in existence at the date of performance of the contract: per Vaughan Williams, L.J., in Krell v. Henry, infra.

(o) Krell v. Henry, [1903] 2 K. B. 740, 754. But money which has been actually paid under such a contract cannot be recovered back: Civil Service Co-operative Society v. General Steam Navigation Co., [1903] 2 K. B. 756. And, further, any

(m) See Wolstenholme's Convey- legal right accrued previously to the ascertainment of the impossibility of performance remains in force: Chandler v. Webster, [1904] 1 K. B. 493, at p. 501. See. too, Herne Buy Steamboat Co, \forall . Hutton, [1903] 2 K. B. 683, where a contract to place a ship "at the disposal" of the defendant for two days, at the time of an intended naval review. was held not to operate as a demise of the ship.

(p) Baily v. De Crespigny (1869).

L. R. 4 Q. B. 180. (q) Cornewall v. Dawson (1871), 24

L. T. 664.

(r) Blow v. Lewis (1902), 19 T. L. R. 127.

Where a lease has been entered into for an illegal purpose, the Covenants covenants contained in it are void (s); and so is a covenant for illegality. indemnity given by the assignee of premises which have been used and are intended to be used for an immoral purpose (t). And a covenant in a lease may be void as being in restraint of trade (u).

The ordinary remedy on a covenant is by action to recover Damages or damages for breach of the covenant (x). Sometimes a specific sum is agreed to be paid by way of penalty, and the covenantee then has his election whether to bring an action for the penalty, or to proceed upon the covenant (y), though in either case only the actual damage sustained is recoverable (z). But the parties may agree upon a sum to be paid by way of liquidated damages, and if the sum is really liquidated damages they are bound by their agreement, and the sum named can be recovered. where the tenants of a public-house had covenanted that, if the licence should be forfeited, lost, or withheld, they would pay to the landlords 250l. as liquidated damages, the stipulated damages were held to be payable, although the renewal of the licence had been withheld without any fault on the part of the tenants (a). But the use of the terms "penalty" or "liquidated damages" is not conclusive (b), and whether the sum mentioned in an agreement to be paid for a breach of covenant is to be treated as

a penalty or as liquidated and ascertained damages is a question

of law to be decided by the Judge upon a consideration of the

whole instrument (c). Acquiescence by the lessor in a breach of

penalty.

(y) Lonce v. Peers (1768), 4 Burr.

(b) Law v. Local Board of Redditch, [1892] 1 Q. B. 127, 132.

⁽s) Gas Light and Coke Co. v. Turner (1840), 6 Bing. N. C. 324. (t) Smith v. White (1866), 1 Eq.

⁽u) Hinde v. Gray (1840), 1 M. & Gr. 195. As to the reasonableness of such a restriction being a question for the Judge, see Dowden and Pook v. Pook, C. A. [1904] 1 K. B. 45. And cf. Noukes v. Rice, [1902] A. C. 24 (tied-house covenant in mortgage of leasehold public-house held to be a dog on the equity of redemption).

⁽x) As to whether an action can be brought before actual breach, 500 Johnstone v. Milling (1886), 16 Q. B. D. 460. As to specific relief by means of an injunction, see supra, p. 122.

p. 2228.

⁽z) As to the effect of a judgment for the penalty, see 8 & 9 Will. 3, c. 11, s. 8; R. S. C. 1883, Ord. 13, r. 14.

⁽a) Dalley v. Phillips and Marriott (1901), 18 T. L. R. 18. See, too, Lord Howard de Walden v. Barber (1903), 19 T. L. R. 183, where an agreement to pay a fixed sum as liquidated damages if the demised premises were used for a brothel was upheld.

⁽c) Sainter v. Ferguson (1849), 7 O. B. 727, per Wilde, C.J. cases on the subject are reviewed in the judgment of Jessel, M.R., in Wallis v. Smith (1882), 21 Ch. D.

covenant may bar his remedy, but he must have full knowledge of the breach (d).

OPTION OF PURCHASE.

Option of purchase.

yes, side broodale v Chilini

Leases sometimes contain a provision giving to the lessee, his executors, administrators, and assigns, an option of purchasing the fee simple from the lessor, his heirs or assigns (e). Whether, in order that the provision may be completely valid, a period must be fixed for the exercise of the option which does not transgress the rule against perpetuities, is a disputable question, upon which there has not yet been a direct judicial decision. But the arguments in favour of the applicability of the rule to such an option are so weighty that, pending judicial decision of the question, it will be prudent, it is conceived, where such a provision is to be inserted in a lease for a term exceeding twentyone years, so to express it that the option must necessarily be exercised, if at all, within the limit of time permitted by the rule, that is to say, within some life in being at the date of the lease and twenty-one years afterwards (f).

Right to purchasemoney.

If the option is exercised by the lessee after the death of the lessor, the purchase-money will belong to the lessor's personal representatives and not to his heir or devisee, although the latter will take the rents until the option is exercised (q); unless by a will, made after the date of the contract by which the option is given, the testator specifically devises the property subject to the option without referring to the contract he has entered This is held to show an intention that the property into (h).

243. See Lord Elphinstone v. Monkland Iron and Coal Co. (1886), 11 App. Cas. 332; Barton v. Capewell Patents Co. (1893), 68 L. T. 857. For a case where an additional rent for selling hay or straw off the premises was construed as a penalty, see Willson v. Love, [1896] 1 Q. B. 626; but a sum payable by the tenant of a publichouse on conviction of an offence against the Licensing Acts has been treated as liquidated damages: Ward v. Monaghan (1895), 11 T. L. R. 529.

(d) See Ashcombe v. Mitchell (1895), 12 T. L. R. 17.

(e) Trustees and personal representatives cannot give such an option; see supra, pp. 58, 60. As to tenant for life, see supra, p. 46.

(f) The arguments pro and con have been ably discussed in two articles in the Solicitors' Journal (42 Sol. Journ. pp. 628, 650); see, too, Key and Elphinstone's Prec. 6th ed. Vol. I. pp. 540, 706, 707; and cf. London and South Western Ry. Co. v. Gomm (1882), 20 Ch. D. 562, at pp. 581,582; overruling Birmingham Canal Co. \forall . Cartwright (1879), 11 Ch. D. 421.

(y) Lawes ∇ . Bennett (1785), 1 Cox, 167, 171; Townley v. Bedwell (1808), 14 Ves. 591; Collingwood v. Row (1857), 26 L. J. Ch. 649. The rule equally applies whether the grantor dies testate or intestate, and although the option is exercisable only after his death: Re Isaacs, [1894] 3 Ch. 506.

(h) Weeding v. Weeding (1861), 1 J. & H. 424; Drant v. Vause (1842), 1 Y. & C. C. C. 580; Emuss v. Smith

(1848), 2 De G. & S. 722.

should pass under the devise whatever form it might assume, but a specific devise made by a will dated before the contract has no such effect (i). Where, however, the will containing the specific devise was confirmed by a codicil made on the same day as the contract giving the option, the testator was held to have confirmed the will upon the footing of the option being exercisable, and the rule in Lawes v. Bennett was excluded (k). inconvenience likely to result from the operation of the doctrine indicates the advisability of restricting the exercise of the option to a short period.

All conditions precedent imposed on the exercise of the option Conditions must be strictly fulfilled by the lessee before the contract of for exercise purchase can arise (l). Thus if it is provided that if the lessee should desire to purchase the fee simple, and should give three months' notice of such desire, and at the expiration of such notice should pay the purchase-money, the lessor will convey the property to the lessee, the lessee must pay the purchase-money on the day on which the three months' notice expires, or he will lose his right to require a conveyance (m).

The notice of intention to exercise the option must be in Notice writing (n), and must be given to all the lessors (o). Where the option. lease provides that if the lessee should be desirous at any time before a given date of purchasing the fee, and of such desire should give six calendar months' previous notice in writing, the notice must be given so that the six months shall expire not later than the specified date (p).

In a case where the lessor had a right of purchasing the lease it was held in Ireland that the purchase by the assignee of the reversion of the leasehold interest in a part only of the land

exercise.

- (i) Weeding v. Weeding, supra. (k) Re Pyle, [1895] 1 Ch. 724.
- (1) Weston v. Collins (1865), 34 I. J. Ch. 353. Where the right is given to the lessee and his assigns, it is not exercisable by an equitable

assignee: Friary Holroydand Healey's Breweries v. Singleton, [1899] 1 Ch. 86, unless the lessor has waived strict compliance with the terms of the option: S. C. on appeal, [1899] 2 Ch. 261. See Re Adams and Ken-

sington Vestry (1884), 27 Ch. D. 394. (m) Ranelugh v. Melton (1864), 2 Dr. & Sm. 278; Brooke v. Garrard (1857), 3 K. & J. 608; aff. 2 De G. &

- J. 62. See Alderson v. White (1858), 2 De G. & J. 97; and cf. Mills v. Haywood (1877), 6 Ch. D. 196.
- (n) Birmingham Canal Co. v. Cartwright (1879), 11 Ch. D. 421. See Dawson v. Dawson (1837), 8 Sim. 346, and (as to an option to require a further lease at the end of the term) Beatson v. Nicholus (1842), 6 Jur. 620. The notice may be served on the infant heir of the lessor: Woods v. Hyde (1862), 31 L. J. Ch. 295.
- (o) Sutcliffe v. Wardle (1890), 63 L. T. 329.
- (p) Riddell v. Durnford (1893), 37 Sol. Journ. 267.

included in the lease deprived him of his option to purchase the residue (q). But having regard to sect. 12 of the Conveyancing Act, 1881 (r), that decision might not be followed now.

Effect on option of breach of covenant.

Unless so expressed, it is not a condition precedent to the exercise of the option that the lessee shall have performed the stipulations in the lease. Hence in a building agreement with an option of purchase, where the lessee declared his option, and the lessor subsequently gave notice to determine the agreement for non-performance of the building stipulations, it was held that the lessee's option was well exercised (s). So the option is not forfeited by a breach of the covenant to insure (t). If the lessor is bound to insure, and the demised premises have been burnt before the declaration of the option of purchase, the lessee is not entitled, upon the principle of Lawes v. Bennett(u), to claim the insurance money (x). The principle of that case is not to be extended (x).

OPTION TO DETERMINE LEASE.

Option to determine lease.

A provision is frequently inserted in leases allowing of the lease being terminated at a specified time or times by notice given by one party to the other, usually by the lessee to the lessor. In the absence of provision on the subject such an option is exercisable by the lessee only (y). Hence, if it is to be exercisable by the lessor also, this should be expressly stated (z).

COVENANT FOR RENEWAL.

Construction of covenant for renewal.

Leases sometimes contain a covenant on the part of the lessor for renewal (a) of the lease at the expiration of the term, or at some period within the term (b). Usually it is expressed that the new lease should be subject to the same covenants as the old lease, but such a stipulation by itself does not entitle the lessee to have the covenant for renewal again inserted so as to give him

- (q) Sparrow v. Cooper (1833), Hayes & J. 404.
 - (r) 44 & 45 Vict. c. 41.
- (s) Raffety v. Schofield, [1897] 1 Ch. 937.
- (t) Green v. Low (1856), 22 Beav. 625.
 - (u) Supra, p. 164.
- (x) Edwards v. West (1878), 7 Ch. D. 858. Cf. Reynard v. Arnold (1875), L. R. 10 Ch. 386.
 - (y) Infra, Chap. VI., Sect. 1 (4).
- (z) For the effect of words purporting to make the exercise of the option dependent on the payment of rent and performance of covenants, see supra, p. 158, and Day. Conv. Vol. V. Part I. p. 341, note (c).
- (a) See Hussey v. Domrille, [1903] 1 Ir. R. 265 (lease for three lives).
- (b) See Bogg v. Midland Ry. (m. (1867), L. R. 4 Eq. 310. As to a right of renewal of a sub-lease, see infra, Chap. IV., Sect. 13 ad fin.

a right to a perpetual renewal (c). The Courts, it has been frequently said, lean against construing a covenant to be for a perpetual renewal unless such an intention is clearly expressed (d). And the intention is to be gathered only from the language of the deed; the construction is not affected by the action of the parties, as where a renewal has already been several times granted (e). The covenant, however, will be construed as perpetual if such an intention is apparent, as where the lease is expressly made renewable for ever (f), or where the lessor covenants to renew at any time when requested by the lessee (g), or where the covenant is for renewal with the same covenants "including the present covenant" (h). If the lessee dies within the term, the right of renewal passes to his executors (i).

It is, however, to be borne in mind that a covenant for perpetual renewal, entered into by a person who has only a limited interest in the land, does not bind the estate beyond that interest; and, therefore, if his assignee acquires the inheritance, it is not bound by the covenant (k).

A covenant for perpetual renewal is not obnoxious to the rule against perpetuities (l).

Before the end of the term the lessee must give formal notice Conditions of of his intention to renew (m). Default in this respect may cause him to forfeit his rights under the covenant (n). If the new lease

renewal.

- (c) Tritton v. Foote (1789), 2 Bro. C. C. 636; Hyde v. Skinner (1723), ² P. Wms. 196.
- (d) Baynham v. Guy's Hospital (1796), 3 Ves. p. 298; Moore v. Foley (1801), 6 Ves. p. 237; Iggulden v. May (1804), 9 Ves. p. 330; Brown v. Tighe (1834), 2 Cl. & F. p. 416; Swinburne v. Milburn (1884), 9 App. Cas. p. 850. ('f. Smyth v. Nangle (1840), 7 ('l. & F. 405.

(e) Baynham v. Guy's Hospital, supra; Euton v. Lyon (1798), 3 Ves. p. 694; Iggulden v. May, supra.

- (f) City of London v. Mitford (1807), 14 Ves. 41; Nicholson v. Smith (1882), 22 Ch. D. 640.
- (g) Copper Mining Co. v. Beach (1823), 13 Beav. 478. See Furnival v. Crew (1744), 3 Atk. 83; and cf. Brown v. Tighe, supra.
- (h) Hare v. Burges (1857), 4K. & J. 45.
- (i) Hyde v. Skinner (1723), 2 P. Wms. 196.

- (k) Brereton v. Tuohey (1858), 8 Ir. C. L. R. 190, at pp. 204, 205, approved by Farwell, J., in Muller v. Trafford, [1901] 1 Ch. 54, 62 (where the particular covenant in question was held to be not strictly a covenant for renewal).
- (l) See per Jessel, M.R., in London and South Western Ry. Co. v. Gomm (1882), 20 Ch. D. at p. 579; also 42 Sol. Journ. at pp. 629, 630.

(m) Nicholson v. Smith (1882), 22 Ch. D. 640; Harries v. Bryant (1827), 4 Russ. 89; Wight v. E. of Hopetoun (1864), 4 Macq. 729; see Rubery v. Jervoise (1786), 1 T. R. 229.

(n) Bayly ∇ . Corp. of Leominster (1792), 1 Ves. 476; Eaton v. Lyon (1798), 3 Ves. 690; City of London v. Mitford, supra; though relief may in some cases be obtained in equity against failure to observe the requirements of renewal: E. of Ross v. Worsop (1740), 1 Bro. P. C. 281; Statham v. Trustees of Liverpool is to be granted in case the covenants on the lessee's part have been duly performed (o), or upon his "performing and observing the covenants" (p), such performance is a condition precedent to renewal, and if, at the time for renewal, there is a breach of covenant, though not serious (q), the right to renewal is lost. But if the covenant is for renewal upon payment of a specified sum of money, it is not necessary that such sum should be paid before the end of the term. It is enough if it is paid when the new lease is ready for execution (r).

Costs of renewal.

Where, by the terms of the lessor's covenant to renew, renewal is to take place "at the costs of the lessee," the covenant means that the lessee is to pay all costs necessarily and properly incurred for the purpose of the renewal, which may include, for instance, the costs of an arbitration to ascertain the amount of a fine payable by the lessee for the renewal (s).

Duration of renewed lease.

Where there is an agreement to renew a lease without any express stipulation as to the duration of the new lease, it is $prim\hat{a}$ facie implied that the new lease shall be of the same duration as the old one (t).

PROVISO FOR RE-ENTRY.

Proviso for re-entry.

A proviso for re-entry on non-payment of rent or non-performance or non-observance of any of the covenants by the lessee contained in the lease is generally inserted; but it has been held that the insertion of a proviso for re-entry on non-performance or non-observance of covenants cannot be insisted on where a lease is made in pursuance of an agreement which is either silent as to the provisions to be contained in the lease, or provides that it shall contain the "usual provisions" (u). And though a proviso for re-entry on the bankruptcy of the lessee (x), or on his contracting a debt upon which judgment should be signed and

Nocks (1830), 3 Y. & J. 565; as where it would, under the circumstances, be inequitable for the lessor to insist on strict compliance: Hunter v. E. of Hopetoun (1865), 13 L. T. 130.

(o) Finch v. Underwood (1876), 2 Ch. D. 310; Job v. Banister (1856), 2 K. & J. 374.

(p) Bastin v. Bidwell (1881), 18 Ch. D. 238. Cf. Thompson v. Guyon (1831), 5 Sim. 65.

(q) Finch v. Underwood, supra.

(r) Nicholson v. Smith, supra.

(s) Lord Mostyn v. Fitzsimmons. C. A., [1903] 1 K. B. 349; affirmed in H. L., [1904] A. C. 46, reversing Wright, J., [1902] 1 K. B. 512.

(t) Price v. Assheton (1834), 1

Y. & C. Ex. 82.

(u) Holgkinson v. Crowe (1875), L. R. 10 Ch. 622. See supra, p. 154.

(x) Roe v. Galliers (1787), 2 T. R. 133. See Church v. Brown (1808), 15 Ves. p. 268.

execution issue (y), is lawful, yet it is not a "usual provision" (z), and it makes no difference that the subject-matter of the lease is a public-house (a). It is, perhaps, arguable that a power of re-entry in case any other business than that of a licensed victualler is carried on upon the premises is usual in a lease of a public-house (b). The law on the subject has not been altered by the increased facilities for obtaining relief against forfeiture given by sect. 14 of the Conveyancing Act, 1881 (c).

The right of re-entry does not depend on the existence of a Right of reversion. Hence it may exist in a lessee who has assigned his re-entry although whole interest, subject to a right of re-entry on breach of a no reversion. condition (d). A right of entry for a condition broken is not assignable under 8 & 9 Vict. c. 106, s. 6, that enactment referring to a right of entry in an owner kept out of possession (e).

It is not essential that leases containing provisoes or con- Proviso for ditions for re-entry should be made by deed (f); or that any re-entry, how framed. special form of words should be used in the proviso. It is sufficient if it appear that the words used were intended to have the effect of creating a condition, as, "it is stipulated and conditioned "(g). But a power of re-entry will not be implied from mere words of agreement (h). Formerly the right of entry could not be reserved to a stranger to the legal estate in the premises (i), but the strictness of the rule has been modified by recent statutes. Under 8 & 9 Vict. c. 106 (k), s. 5, the benefit of a condition Who may or covenant in an indenture respecting any tenements or here- of proviso. ditaments may be taken by a person not named a party to the

take benefit

(y) See Davis v. Eyton (1830), 7 Bing. 154. As to the construction of provisoes for re-entry, see Doe v. Pritchard (1833), 5 B. & Ad. 765; Doe v. David (1834), 1 Cr. M. & R. 405; Due v. Davies (1834), 6 C. & P. 614; Doe v. Rees (1838), 4 Bing. N. C. 384; Hunt v. Bishop (1853), 8 Ex. 675.

(2) Hodykinson v. Crowe (1875), L. R. 10 Ch. 622; Hyde v. Warden

(1877), 3 Ex. D. 73.

(a) Re Lander and Bayley's Contract, [1892] 3 Ch. 41; Hampshire v. Wickens (1878), 7 Ch. D. 555. Reliance cannot now be placed on Haines v. Burnett (1859), 27 Beav. 500, which was to the contrary.

(b) Bennett v. Womack (1828), 7 B. & C. 627.

(r) Re Anderton and Milner's Contract (1890), 45 Ch. D. 476.

(d) Doe v. Bateman (1818), B. & A. 168.

(e) Hunt v. Bishop (1853), 8 Ex. 675; Hunt v. Remnant (1854), 9 Ex. 635.

(f) See Hayne v. Cummings (1864), 16 C. B. N. S. 421.

(y) Doe v. Watt (1828), 8 B. & C. p. 315.

(h) Shaw v. Coffin, 14 C. B. N. S. 372. See Crawley v. Price (1875), L. R. 10 Q. B. 302.

(i) Litt. sect. 347; Doe v. Laurence (1811), 4 Taunt. 23; Saunders v. Merryweather (1865), 3 H. & C. 902; Doe v. Goldsmith (1832), 2 Cr. & J. 674. See Doe v. Adams (1832), ib. 232.

(k) The Real Property Act, 1845.

indenture; and under sect. 10 of the Conveyancing Act, 1881 (l), every condition of re-entry contained in a lease is to be annexed and incident to, and to go with, the reversionary estate in the land or in any part thereof immediately expectant on the term granted by the lease, and is to be capable of being enforced and taken advantage of by the person from time to time entitled, subject to the term, to the income of the land leased. Apparently the phrase "person entitled to the income" includes the beneficial owner.

Forcible re-entry.

Construction of provisoes for re-entry.

The words which were formerly inserted in provisoes for re-entry, authorizing the lessor to effect a forcible entry and eject the lessee (m), are void as giving a licence to commit a crime (n).

It is sometimes said that provisoes for re-entry are to be construed strictly (o); but, before any such rule is applied, the meaning of the proviso must be ascertained by a proper consideration of the language used. Conditions of this nature are entitled neither to favour nor disfavour, whether they are to create a forfeiture or continue an estate; but a fair construction is to be put upon them according to the apparent intent of the contracting parties (p). It must be clear that the condition was meant to include the covenant for breach whereof the right of re-entry is claimed (q), and that there has been a breach of covenant (r); but the question of breach or no breach must be determined by reference to the rules which prevail in construing ordinary contracts between party and party (s).

In cases of doubt, however, the principle of the rule that the words of a covenant must be taken against the covenantor applies more strongly to a proviso for re-entry, which contains a condition that destroys or defeats the estate (t). Where a proviso is insensible, it seems that the Courts will not find out a meaning for it (u).

p. 303.

(1) 44 & 45 Vict. c. 41.

(m) See, for instance, the proviso in Kavanagh v. Gudge (1844), 7 M. & Gr. 316.

(n) Edwick v. Hawkes (1881), 18 Ch. D. 199, 208; infra, Chap. VII., Sect. 5 (2) (ii).

(a) See Doe v. Godwin (1815), 4 M. & S. p. 269; Doe v. Marchetti (1831), 1 B. & Ad. 715, 720.

(μ) Per Lord Ellenborough, C.J., in Goodtitle v. Saville (1812), 16 East, p. 95; Dee v. Elsam (1828), Moo. & M.

189; Doe v. Gladwin (1845), 6 Q. B. p. 961.

(q) Croft v. Lumley (1858), 6 H. L. C. p. 693.

(r) West v. Dobb (1870), L. R. 5 Q. B. 460. See per Cotton, L.J., in Corp. of Bristol v. Westcott (1879), 12 Ch. D. p. 467.

(s) Croft v. Lumley, supra. (t) Per Lord Tenterden, C.J., in Doe v. Stevens (1832), 3 B. & Ad. at

(u) Doe v. Carew (1841), 2Q. B. 317.

It was suggested in West v. Dobb (x) that a proviso of re-entry Re-entry on could not apply to a breach of a negative covenant, and there have been other judicial dicta in favour of that view (y). But a covenant. proviso for re-entry if the lessee shall not perform and keep the covenants is wide enough to cover breaches of negative covenants(z), and this is the case generally where the proviso is aimed at non-observance as well as non-performance (a). In a very recent case (b), a proviso for re-entry "in case the said lessee shall commit any breach of the covenants hereinbefore contained, and on his part to be performed," was held by the Court of Appeal to apply to a negative covenant by the lessee not to sublet.

breach of negative

The following cases illustrate the construction of provisoes for re-entry:—

Proviso for re-entry for breach of covenants "hereinafter con- Construction The lessor cannot re-enter for breach of a tained." covenant placed before the proviso in the lease, although there are no covenants by the lessee after the proviso (d).

of particular provisoes (c).

Proviso for re-entry if the lessee shall "do or cause to be done any act, matter or thing whatsoever contrary to or in breach of any one or more of the covenants." Does not apply to a breach of a covenant to repair, the omission to repair not being an act done within the meaning of the proviso (e).

Proviso for re-entry if the lessee "shall, by the space of thirty days next after notice for that purpose, make default in the performance of any or either of the clauses or agreements herein contained." Does not apply to the breach of a covenant not to allow alterations in the premises, or permit new buildings to be made upon them without permission (f).

(x) (1870), L. R. 5 Q. B. 460.

(y) Hyde v. Warden (1877), 3 Ex. D. p. 82, per Brett, C.J.; Evans v. Davis (1878), 10 Ch. D. p. 761, per Fry, J.

(z) Evans v. Davis, supra.

(a) Timms v. Baker (1883), 49 L.T. 106.

(b) Harman v. Ainslie, C. A., [1904] 1 K. B. 698, reversing the decision of Wright, J., [1903] 2 K. B. 241. Collins, M.R., in his judgment in this case, said (at pp. 704, 705): "When one speaks of 'performing' a covenant, it is in the sense of fulfilling the duty created by it, whether to do or to abstain from doing a thing.... I think 'perform' means in this context 'carry out the obligation undertaken,' whether negative or affirmative."

(c) As to proviso for re-entry on assignment, see infra, Chap. V.

(d) Doe v. Godwin (1815), 4 M. & S. 265.

(e) Doe v. Stevens (1832), 3 B. & Ad. **299.**

(f) Doe v. Marchetti (1831), 1 B. & Ad. 715.

- Proviso for re-entry "if the lessee shall make default in the performance of all or any of the covenants which on his part are or ought to be observed, performed or kept." Applies to and forbids the breach of a negative as well as a positive covenant (g).
- Proviso for re-entry if the lessee shall "be duly found and declared a bankrupt." Does not apply where the tenant is found and declared a bankrupt without a proper petitioning creditor's debt (h).
- Proviso for re-entry "if the lessee, his executors, administrators or assigns, shall become bankrupt." Refers only to the bankruptcy of the person who for the time being is possessed of the term, and there is no forfeiture on the bankruptcy of the original lessee after assignment by him (i).
- Proviso for re-entry if the lessee, his executors, administrators or assigns, should become bankrupt or insolvent, &c. The right of re-entry accrues on the bankruptcy of the survivor of certain executors to whom the tenant, dying during the term, has bequeathed the premises on trust (k).
- Proviso for re-entry if the lessee shall "happen to become insolvent and unable in circumstances to go on with the management of the farm." It was doubtful whether the attainder of the tenant was a forfeiture of the lesse (l).
- Proviso for re-entry "in case the term of years hereby granted shall be extended or taken in execution." Seizure by the sheriff under a writ of extent against the lessee at the suit of the Crown is a taking in execution within this proviso (m).
- Proviso in a demise to a company for re-entry if the company "shall be wound up voluntarily or by compulsion or otherwise under the provisions of any Act of Parliament." The right of re-entry accrues on the making of the

(g) Croft v. Lumley (1858), 6 H. L. C. 672. And as to breach of negative covenants, see supra, p. 171.

(h) Doe v. Ingleby (1846), 15 M. & W. 465.

(i) Smith v. Gronow, [1891] 2 Q.B. 394. Provisoes of this nature run with the land: Williams v. Earle (1868), L. R. 3 Q. B. p. 749; Horsey

Estate, Lim. v. Steiger, [1899] 2 Q.B. 79.

(k) Doe v. David (1834), 1 Cr. M. & R. 405.

(1) Doe v. Pritchard (1833), 5 B. & Ad. 765.

(m) Rex v. Topping (1825), M'Clel. & Y. 544.

winding-up order, and is not deferred till the end of the winding up (n); and it accrues upon a voluntary liquidation, although the liquidation is effected merely for the purpose of reconstruction (o).

Proviso for re-entry "if the tenant shall make default in payment of the rent, or any part thereof, within twenty-one days after the same shall have become due, being demanded." Before the landlord can enforce his right of re-entry, the rent must have been in arrear for twenty-one days, and demand must be made after the end of that period. The demand need not, however, be accompanied with the formalities required for a common law demand of rent (p).

Proviso for re-entry "in case of breach of any of the agreements herein contained" (in a written agreement whereby premises are let for a term, "at and under the rent of 801."). The lessor may re-enter for non-payment of rent, although there is no express agreement to pay rent (q).

Proviso for re-entry upon breach of any of the covenants, enumerating all the covenants except a covenant not to carry off hay, &c., under a penalty of 5l. per ton. The meaning is, that if the hay be removed without payment of that sum, the right of re-entry shall accrue (r).

Proviso for re-entry if the tenant does not execute certain repairs to the satisfaction of the surveyor of the lessor. It is sufficient if those who try the cause think that the surveyor ought to have been satisfied with the repairs which are done, and, although he is not in fact satisfied, no forfeiture will be incurred (s).

Proviso for re-entry "in case no sufficient distress can be found

⁽n) General Share and Trust Co. v. Wetley Brick Co. (1882), 20 Ch. D. 260.

⁽a) Horsey Estate, Lim. v. Steiger, [1898] 2 Q. B. 259, [1899] 2 Q. B. 79; approved on this point in Fryer v. Ewart, [1902] A. C. 187, affirming Ewart v. Fryer, [1901] 1 Ch. 499.

⁽p) Phillips v. Bridge (1873), L. R. 9 C. P. 48, 53. So where the expression is "legally demanded": Thorp v. Hunt (1886), W. N. p. 96. Cf.

Manser v. Dix (1857), 8 D. M. & G. 703. As to the formalities of the common law demand, see infra, Chap. VI., Sect. 2 (3) (ii); 1 Wms. Saund. ed. 1871, p. 434; Doe v. Bowditch (1846), 8 Q. B. 973.

⁽q) Doe v. Kneller (1829), 4 C. & P. 3.

⁽r) Doe v. Jepson (1832), 3 B. & Ad. 402, 403.

⁽s) Doe v. Jones (1848), 2 C. & K. 743.

upon the premises." Search for distrainable goods must be made in every part of the premises (t).

Proviso for re-entry "if and whenever" any one quarter's rent shall be in arrear for twenty-one days, and no sufficient distress can be levied. When three quarters' rent was in arrear, the landlord distrained, and after sale of the distress there remained due more than one quarter's rent. Held, that the landlord was entitled to recover possession, the two conditions existing when the action was brought (u).

Proviso for re-entry "if the lessee shall commit waste to the value of 10s." The waste contemplated in the proviso is waste producing an injury to the reversion (x).

Proviso for re-entry in default of making it appear, by a good and sufficient certificate, that a certain person in a foreign country is living. The fact cannot be properly certified by hearsay, or presumptive evidence (y).

Provisions for resumption of possession of part of demised premises.

Construction of such provisions.

Sometimes there is inserted in a lease a provision enabling a lessor to resume possession of any portion, or certain specified portions, of the demised land on giving notice to the lessee. The following are instances in which such provisions have been judicially construed:—

Proviso empowering the lessor to resume any portion of the demised land which may be required for the purpose of "building, planting, accommodation or otherwise." The words or otherwise must be held to refer to some purposes of the same character as those before specified, and the proviso will not enable the lessor to resume a portion of the land for the purpose of conveying it to a railway company (z).

COVENANT that if lessor shall be desirous, during the term, to take all or any part of the land for building thereon it shall be lawful for her to enter upon all or any part to make such buildings as she shall think proper, and to do all necessary acts without interruption by the lessee, provided the lessor give six months' notice of such intention. This is not merely &

⁽t) Rees v. King (1800), Forrest, 19. (u) Shepherd v. Berger, [1891] 1

Q. B. 597. (x) Doe v. Bond (1826), 5 B. & C. 855.

⁽y) Randle v. Lory (1837), 6 A. & E. 218.

⁽z) Johnson v. Edgware, Highgate, and London Ry. Co. (1866), 35 Beav. 480.

covenant that the lessor may come upon the land in order to build upon it, but she may take the whole of the land back for the purpose of building (a).

STIPULATION in an agreement to let (in which there was no clause of re-entry) that in case the landlord should want any part of the demised land to build, or otherwise, the lessee will give up that part on a proportionate abatement being made in the rent, the fences being paid for and six months' notice being given. This is a covenant and not a condition operating in defeasance of the estate (b).

In connection with the last-mentioned class of provisions, reference may be made to a case in which there was a proviso giving to the lessor's son power to take a demised house for himself when he should come of age, and it was held that the son was bound to make his election within a reasonable time after coming of age, and that the delay of a year was unreasonable (c).

(4) STAMPS ON LEASES.

An instrument in writing (d) or under seal which operates as a lease must bear a stamp to be calculated according to the scale subsequently set out (e). But the duty is only chargeable when there is an absolute demise (or agreement for demise) of the premises (f). A mere acknowledgment of an antecedent tenancy does not require a lease stamp (g).

The first schedule to the Stamp Act, 1891, deals with stamp Stamp Act, duties on leases as follows:—

first schedule.

"Lease (h)—

 \pounds s. d.

(1) For any definite term not exceeding a year— Of any dwelling-house or part of a dwellinghouse at a rent not exceeding the rate of 10l. per annum

0 0 1

(a) Doe v. Abel (1814), 2 M. & S. 541, 549. See Doe v. Kennard (1848), 12 Q. B. 244.

(b) Doev. Phillips (1824), 2 Bing. 13. (c) Doe v. Smith (1788), 2 T. R. 436.

(d) Although the lease might have been made by parol: Prosser v. Phillips, Bull. N. P. 269.

(c) As to when an adhesive stamp may be used, see Stamp Act, 1891,

8, 78; and see sects. 7 and 8.

(f) See Conservators of River Thames v. Comm. of Inland Revenue (1886), 18 Q. B. D. 279. A written proposal as to a particular point, pending negotiations for a lease, may be given in evidence without a stamp: Bethell v. Blencowe (1841), 3 M. & Gr. 119.

(g) Eagleton v. Gutteridge (1843), 11 M. & W. 465. See Hill v. Ramm (1843), 5 M. & Gr. 789; and as to admission of a tenancy on sufferance, see Barry v. Goodman (1837), 2 M. & W. 768.

(h) The term as used here does not

- (2) For any definite term less than a year—

 (a) Of any furnished dwelling-house or apartments where the rent for such term exceeds 25l. (i) 0 2 6
 - (b) Of any lands or tenements, except or otherwise than as aforesaid . . .

The same duty
as a lease for
a year at the
rent reserved
for the desnite term.

(3) For any other definite term or for any indefinite term—

Of any lands or tenements:

Where the consideration, or any part of the consideration, moving either to the lessor or to any other person (j), consists of any money, stock or security:

In respect of such consideration .

The same duty
as a conveyance on a sale
for the same
consideration (k).

Where the consideration or any part of the consideration is any rent:

apply to a lease of chattels, and an agreement for the use of telephone wires reserving an annual payment is chargeable as a bond, covenant or instrument constituting a principal security: Jones v. Comm. of Inland Revenue, [1895] 1 Q. B. pp. 492, 493; National Telephone Co. v. Comm. of Inland Revenue, [1899] 1 Q. B. 250.

(i) The duty under (1), and also that on a lease of any furnished dwelling-house or apartments for any definite term less than a year, may be denoted by an adhesive

stamp: sect. 78 (1).

(j) Hence where a builder sells a house, and the lease is taken direct from the ground landlord to the purchaser, the lease must show the purchase-money paid to the builder. See Att.-Gen. v. Brown (1849), 3 Ex. 662. The statute 55 Geo. 3, c. 184, s. 8, requiring the consideration to be set out, and imposing an ad valorem duty on the consideration, applied only to the case of a consideration passing between the lessor and the

lessee: Boone v. Mitchell (1822), 1 B. & C. 18, 20.

(k) I.e.—Where the amount £ s. d. or value of the consideration for the sale does not exceed 5l. 0 0 6

ave	ю пог	exceed	Ji.	V	U	O
Where	it exce	eds—				
5l. an	d does	not exce	ed 10 <i>l</i> .	0	1	0
10 <i>l</i> .	,,	,,	1 <i>5l</i> .	0	1	6
15 <i>l</i> .	,,	,,	201.	0	2	0
20%.	,,	••	25 <i>l</i> .		2	6
251.	,,	,,	50 <i>l</i> .	0	5	0
50 <i>l</i> .	• •	,,	75l.	_	7	6
75l.	,,	"	100%.	_		0
100 <i>l</i> .	"	"	1254.	_		6
125 <i>l</i> .	,,	,,	150%.	_		0
150 <i>l</i> .	,,	,,	175 <i>l</i> .	_	17	6
17 <i>5l</i> .	••	,,	200%.		0	0
200/.	,,	"	225 <i>l</i> ,	_	2	6
225l.	,,	,,	250%.	_	5	0
250 <i>l</i> .	,,	1)	275l.	_	7	6
275 <i>l</i> .	,,	"	300%	1	10	0
3007., fo	r ever	y 50 <i>l</i> ., ai	oela bn			
for an	y frac	tional p	ert of			

00%, for every 50%, and also for any fractional part of 50%, of such money or value

In respect of such consideration:

If the rent (l), whether reserved as a yearly rent or otherwise, is at a rate or average rate (m):

				If the term does not exceed 35 years, or is indefinite.			If the term exceeds 35 years, but does not exceed 100 years.			If the term exceeds 100 years.		
				£	8.	\overline{d} .	£	8.	d.	£	8.	d.
Not exc	eeding	5l. per s	annum	0	0	6	0	3	0	0	6	0
Exceed		•										
	_	exceedir	ng 10l.	0	1	0	0	6	0	0	12	0
10 <i>l</i> .	,,		15l.	Ō	1	_	0	9	0	0	18	0
$\overline{15l}$.	-	••	20l.	0	_			12	Ŏ	1	4	0
20 <i>l</i> .	"	"	25l.	o	_	6	1	15	ŏ	1	10	ŏ
25l.	"	,,	50 <i>l</i> .	0	5	Ö	ł	10	Ŏ	1	0	Ö
50l.	"	"		1 .						Ī.,	_	
	"	"	75 <i>l</i> .	0	7	6	2	5	0	4	_	0
75 <i>l</i> .	"	"	100 <i>l</i> .	0	10	0	3	0	0	6	0	0
100 <i>l</i> .												
For eve	erv full	l sum o	f 50l									
and also for any fractional												
part of 50l. thereof.			0	5	0	1	10	0	3	0	0	

(4) Of any other kind whatsoever not hereinbefore described (n) . 0 10 0"

A lease made subsequently to, and in conformity with, an Lease in agreement for a lease of any lands or tenements for any term not exceeding thirty-five years, or for any indefinite term, duly stamped, requires a stamp of 6d. only (o).

stamped agreement: Stamp Act, 1891, s. 75 (2).

pursuance of

For special provisions as to the amount of duty in the case of special produce and penal rents, and on certain ecclesiastical leases, see provisions. sects. 76, 77; as to exemption of Crown leases in the Forest of Dean, 24 & 25 Vict. c. 40, s. 22; of leases by the Commissioners of Works, Stamp Act, 1891, Schedule, General Exemptions; by the Commissioners of Woods and Forests, 10 Geo. 4, c. 50, s. 77;

(1) I.e. the ascertainable rent, whether the amount is stated or not: Parry v. Deere (1836), 5 A. & E. 551. See Wilson v. Smith (1844), 12 M. & W. 401. In British Electric Traction Co. v. Inland Revenue Commissioners, [1902] 1 K. B. 441, an annual sum payable by a tramway company to their lessors in lieu of road repairs was held to be "rent," in respect of

which ad valorem duty had to be paid under sect. 4 of the Stamp Act, 1891.

(m) As to the stamp before 1871, see Pearson v. Comm. of Inland Revenue (1868), L. R. 3 Ex. 242.

(n) As to stamps on mining leases, see infra, p. 212.

(o) Supra, p. 123.

Crown Lands Act, 1851 (14 & 15 Vict. c. 42), s. 2; as to foreshores, Crown Lands Act, 1866 (29 & 30 Vict. c. 62), s. 10; as to licences for minerals in the Duchy of Cornwall, 7 & 8 Vict. c. 65, s. 43.

Stamp Act, 1891 (p), s. 5. Facts and circumstances affecting duty to be set forth.

All the facts and circumstances affecting the liability of any instrument to duty, or the amount of the duty with which any instrument is chargeable, are to be fully and truly set forth in the instrument; and every person who, with intent to defraud his Majesty—

- (1) Executes any instrument in which all the said facts and circumstances are not fully and truly set forth; or
- (2) Being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all the said facts and circumstances;

incurs a fine of ten pounds.

Effect of misstatement of consideration.

The misstatement of the consideration, though it subjects the parties to the lease, and the solicitor preparing it, to penalties, does not avoid the instrument (q). Nor is the penalty enforceable if the duty actually paid is that which would have been payable if all the facts and circumstances had been truly set forth in the instrument (r).

Instrument relating to distinct matters.

Under sect. 4 of the Act of 1891 an instrument relating to several distinct matters is to be charged separately with duty in respect of each of the matters. But no further stamp is necessary by reason of the lease containing a covenant to build, or "any covenant relating to the matter of the lease" (s). If a lease contains a demise of two subject-matters and reserves two rents, but the letting is to the same person and is one transaction, one ad valorem stamp on the aggregate amount of both rents is sufficient (t). But if the power of re-entry and distress in respect

(p) 54 & 55 Vict. c. 39. (q) Doe v. Hobson (1823), 3 D. & R. 186; Robinson v. Macdonnell (1816) 5 M & S. at p. 234; Duck v.

(1816), 5 M. & S. at p. 234; Duck v. Braddyll (1824), 13 Price, p. 469; Steer v. Cowley (1863), 14 C. B. N. S. p. 357: decided on similar provisions

in 48 Geo. 3, c. 149.

(r) Alpe's Stamp Duties, 9th ed. p. 19. Previously to 1871 the amount of the duty was regulated by the consideration or rent expressed to be paid, and not by that which was actually paid: Doe v. Lewis (1830), 10 B. & C. 673; Duck v. Braddyll,

supra. Under the Stamp Act, 1870. and the Act of 1891, it is the actual consideration which determines the stamp. See Schedule, tit. Conveyance; compare judgment in Doe v. Lewis, 10 B. & C. p. 675.

(s) Act of 1891, s. 77 (2). See, as to this sub-section and sect. 4 of the Act, the judgments of the Court of Appeal in British Electric Traction Co. v. Inland Revenue Commissioners, [1902] 1 K. B. 441.

(t) Boase v. Jackson (1822), 3 Br. & B. 185; Blount v. Pearman (1834), 1 Bing. N. C. 408; Parry v. Deere

of rent owing for a particular parcel is restricted to that parcel only, the revenue authorities regard the instrument as separate leases, and claim that separate duties are payable (u). A lease of several pieces of land to different persons is liable to ad valorem duty on the separate rents (v), and if it bears only one stamp evidence is admissible to show to which name the stamp is to be allocated (w).

If a certain rent is reserved for a house and land, and by a separate reservation in the same lease another rent is made payable for furniture and fixtures, an ad valorem stamp on the rent of the house and land only is not sufficient (x). And where a lease contains a contract for the sale of fixtures, the instrument must be stamped in respect both of the lease and the contract (y). Consequently it cannot be given in evidence to prove the value of the fixtures unless it has a lease stamp, although it has an agreement stamp (y).

A lease containing an agreement, giving the lessee the option Lease with of purchasing the premises demised for a specified sum, requires only a lease stamp (z); unless the agreement to purchase relates to other premises besides those which are the subject of the lease, in which case an agreement stamp also will be necessary (a).

option of purchase.

Where a stranger covenants in the lease for payment of rent, Guarantee the instrument is sufficiently stamped as a lease only, the covenant being part of the consideration for granting the lease (b).

for rent.

A lease upon which ad valorem duty is payable must, unless Time of the duty may be denoted by an adhesive stamp, be stamped within thirty days after it is first executed, or after it has been first received in the United Kingdom, in case it is first executed out of the United Kingdom, unless it has been submitted for adjudication. If it has been submitted for adjudication, it must be stamped within fourteen days after notice of the assessment (c).

stamping.

(1836), 5 A. & E. 551; Reg. v. Hockworthy (1837), 7 A. & E. 492.

(u) Alpe's Stamp Duties, 9th ed. p. 145.

(v) Doe v. Day (1811), 13 East, 241. See Cooper v. Flynn (1841), 3 Ir. L. R.

(w) Doe v. Day, supra.

(x) Coster v. Cowling (1831), 7 Bing. 456.

(y) Corder v. Drukeford (1811), 3 Taunt 382. See Clayton v. Burtenshaw (1826), 5 B. & C. 41; and cf.

Wick v. Hodgson (1827), 12 Moo. 213; Horsfall v. Hey (1848), 2 Ex. 778.

(z) Worthington v. Warrington (1848), 5 C. B. 635.

(a) See Lovelock v. Franklyn (1946), 8 Q. B. 371.

(b) Price v. Thomas (1831), 2 B. & Ad. 218. But it has been held otherwise where there was a guarantee for payment of penalties: Wharton v.

Walton (1845), 7 Q. B. 474. (c) Stamp Act, 1891, s. 15. Stamping after date.

A lease the duty upon which may be denoted by an adhesive stamp must be stamped at the time of execution (d).

After these periods a lease cannot in general be stamped without payment of a penalty, but the Commissioners may, if they think fit, at any time mitigate or remit any penalty payable on stamping (e). In the case, however, of leases the duty on which may be denoted by adhesive stamps, since a penalty is imposed for non-stamping on execution, the Commissioners usually decline to stamp them after execution without inflicting the penalty under sect. 15 (f). The date of the instrument is accepted as primâ facie evidence of the date of execution, but any alteration or erasure of the date must be explained by a statutory declaration (g).

Insufficiency of stamp.

The want of a proper stamp (h) does not invalidate the lease, but makes it inadmissible in evidence (i), except on payment of penalties (j), for any purpose whatever (k). A new trial will not be granted by reason of the ruling of a Judge that the stamp on a document is sufficient, or that it does not require a stamp (l). Upon a sale of property subject to a yearly tenancy under an agreement in writing, the purchaser is entitled to have the agreement stamped at the vendor's expense (m).

(5) COUNTERPARTS AND DUPLICATES.

Counterpart.

Leases are usually prepared in two parts, known respectively as the lease and counterpart. The lease is executed by the lessor alone, and is kept by the lessee (n). The counterpart is executed by the lessee alone, and is kept by the lessor. The production of a counterpart, properly stamped and executed by the lessee, is presumptive evidence of the execution of a lease (o), and the

(d) Sect. 78.

(e) Sect. 15 (3) (b), as amended by sect. 15 of the Finance Act, 1895 (58 & 59 Vict. c. 16).

(f) Alpe's Stamp Duties, 9th ed.

p. 42.

(y) Ib. p. 42.

- (h) See Stamp Act, 1891, s. 14 (4). The sufficiency of the stamp depends on the law at the time of execution without regard to nominal date: Clarke v. Roche (1877), 3 Q. B. D. 170.
- (i) See Turner v. Power (1828), 7 B. & C. 625; and the Judge is bound to reject it: Bowker v. Williamson

(1889), 5 T. L. R. 382.

(j) Stamp Act, 1891, s. 14 (1). (k) Cf. Matheson v. Ross (1849), 2 H. L. C. p. 300.

(l) R. S. C. 1883, Ord. 39, r. 8; Blewitt v. Tritton, [1892] 2 Q. B. 327. And similarly in a county court:

Mander v. Ridgway, [1898] 1 Q. B. 501.

(m) Coleman v. Coleman (1898), 79 L. T. 66.

(n) Infra, p. 187.

(o) Hughes v. Clark (1851), 10 C. B. 905; Houghton v. Kænig (1856), 18 C. B. 235. See Doe v. Austin (1832), 2 Moo. & Sc. 107; Homes v. Pearce

counterpart is primary evidence as against the lessee who executes it and persons claiming under him (p). A lessee who executes the counterpart of a lease cannot dispute its admissibility in evidence upon the ground of the original lease not being properly stamped (q).

Statutes by which powers of leasing are conferred generally When require the execution of a counterpart by the lessee (r). And a similar requirement is often inserted in powers of leasing contained in settlements. Since, in such a case, the execution of a counterpart is a condition of the validity of the lease, and the lessee may not be able to show that this condition has been fulfilled, he should procure a memorandum of the execution of the counterpart and its delivery to be indorsed on the lease and signed by the lessor (s). Statutory powers of leasing usually provide that the execution of the lease by the lessor shall, in favour of the lessee and persons deriving title under him, be sufficient evidence of the execution and delivery of the counterpart.

execution.

essential.

The counterpart need not be executed at the same time as the Time of lease (t), though it should be executed within such a period that the execution of the two instruments may be regarded as parts of the same transaction (u).

If a lease and counterpart are inconsistent, and the lease is Variance. consistent with itself, the provisions of the lease, which for this purpose is considered as the principal instrument, will prevail (x). But if the lease be inconsistent with itself, it may be corrected by reference to the counterpart (y).

Where copies of a lease are each executed by both lessor and Duplicate. lessee they are termed duplicates. The holder of an original duplicate of a lease has all the remedies which the possession of the original lease would give him, since the duplicate original of a deed is primary evidence (z).

(1858), 1 F. & F. 283. See Burleigh v. Stubbs (1793), 5 T. B. 465.

(p) Roe v. Davis (1806), 7 East, 363, 364; Peurse v. Morrice (1832), 3 B. & Ad. 396. See Munn v. Godbold (1825), 3 Bing. 292, 294.

(q) Paul v. Meek (1828), 2 Y. & J.

116.

(r) See, e.g., Settled Estates Act, 1877, s. 4; Settled Land Act, 1882, 8. 7; Conveyancing Act, 1881, s. 18; 11 Geo. 4 & 1 Will. 4, c. 65, s. 17, as to infants; 5 & 6 Vict. c. 108, ss. 1,

4, as to ecclesiastical corporations.

(s) Sugden, Powers, 8th ed. 826.

(t) Fryer \forall . Coombs (1840), 11 A. & E. 403.

(u) Sugden, Powers, 8th ed. p. 827.

(x) Shep. Touch. p. 53; Burchell v. Clark (1876), 2 C. P. D. 88. See pp. 93, 95, 97.

(y) Burchell v. Clark, supra.

(z) Colling \forall . Treweek (1827), 6 B. & C. p. 398.

Stamp Act, 1891, s. 72.
Denoting stamp necessary.

The duplicate or counterpart of an instrument chargeable with duty (except the counterpart of an instrument chargeable as a lease, such counterpart not being executed by or on behalf of any lessor or grantor) is not to be deemed duly stamped unless it is stamped as an original instrument, or unless it appears by some stamp impressed thereon that the full and proper duty has been paid upon the original instrument of which it is the duplicate or counterpart. The amount of duty on a duplicate or counterpart is prescribed in the first schedule to the Stamp Act, 1891, as follows:—

Amount of duty.

"Duplicate or counterpart of any instrument chargeable with any duty—

Hence the counterpart of an instrument chargeable as a lease if stamped with 5s., or the proper ad valorem lease duty if less than 5s., is admissible in evidence without a stamp denoting payment of the duty on the lease; but a duplicate must bear a denoting stamp (a). The denoting stamp is affixed on application to the Inland Revenue Commissioners, and on production of both the instruments (a).

(6) MATTERS RELATING TO THE COMPLETION OF LEASES. Execution and Delivery.

Execution of leases by deed.

Leases by deed should be signed, sealed and delivered (b) by the parties, or their agents, duly authorised by power of attorney under seal (c). In the absence of stipulation, the lessor is not entitled to insist on witnessing by himself or his agent the execution of the counterpart by the lessee (d).

It seems, however, that signature, though usual and desirable, is not essential to leases by deed (e), unless it is required under

(a) Stamp Act, 1891, s. 11.

(b) Leases under the seal of a corporation need no delivery: 2 Roll. Abr. 23, l. 50; but it has been held that no immediate interest passes unless they are sealed with that intent: Derby Canal Co. v. Wilmot (1808), 9 East, 360.

(c) Supra, p. 70.

(d) Borradaile v. Smart (1857), 5 W. R. 270. Cf. as to sales Viney v. Chaplin (1858), 4 Drew. 237; 2 De G. & J. 468; Essex v. Daniel (1875), L. R. 10 C. P. 538; Conv. Act, 1881, s. 8.

(e) Cherry v. Heming (1849), 4 Ex. 631; Taunton v. Pepler (1821), 6 Mad. 166; Aveline v. Whisson (1842),

the special enactment or power under which the lease is made. No formal mode of delivery is necessary. A deed may be delivered either by handing it over to the party to whom it is made, without words, or by words without any act of delivery (f).

The delivery may be qualified by express words, so as to prevent Escrow. it from operating until the performance of some condition, as, for instance, the payment of a sum of money; and in that case the deed is said to be delivered as an escrow (g); and delivery as an escrow may be inferred from circumstances (h). As a general rule, the delivery as an escrow must not be made to the lessee or grantee himself (i); but it may be made to a solicitor acting on behalf of all parties to the deed (k), even though he is one of the grantees, provided the delivery is made to him in his character as solicitor (l); or to the solicitor acting for the lessee or grantee (m). Where there are two or more lessors or grantors, delivery as an escrow may be made by one of them to another (m). The question whether an instrument has been executed as an escrow is one of fact for the jury, unless reliance is placed on a document accompanying the deed, when the matter is one of construction for the Court (n).

It is desirable that leases by deed should be attested, but, Attestation. unless the deed is made in exercise of a power (o), the want of attestation will not render it void (p). Leases of land in Middlesex and Yorkshire should, however, be attested by at least one witness, since otherwise a memorial of them cannot be registered (q). In cases decided in Courts of Law before the Judicature Effect of non-Act, 1878, it was held that, until the lessor had executed a lease, the execution by lessor. lessee was not bound by the covenants to repair or to pay rent,

```
4 M. & Gr. 801. See Cooch v. Good-
man (1842), 2 Q. B. p. 596; Shep.
Touch. 56, note 24, by Preston.
```

(f) Co. Litt. 36 a.

H. & N. 797.

⁽g) See Pattle v. Hornibrook, [1897] 1 Ch. 25.

⁽h) Bowker v. Burdekin (1843), 11 M. & W. 128; Gudgen v. Besset

^{(1856), 6} E. & B. 986. (i) Co. Litt. 36 a; Thoroughgood's Case (1612), 9 Rep. p. 137 a; Whyddon's Case (1597), Cro. Eliz. 520; Williams v. Green (1601), ib. 884. See Pym v. Campbell (1856), 25 L. J. Q. B. p. 279; contrà, Hawksland v. Gatchel (1600), Cro. Eliz. 835. (k) Millership v. Brookes (1860), 5

⁽l) London Freehold Property Co. v. Suffield, [1897] 2 Ch. 608.

⁽m) Watkins v. Nash (1875), L. R. 20 Eq. 262.

⁽n) Furness v. Meek (1857), 27 L. J. Ex. 31. See Ponsford v. Walton (1868), L. R. 3 C. P. 167,

⁽o) See 22 & 23 Vict. c. 35, s. 12; supra, p. 57.

⁽p) 2 Black. Com. 307.

⁽q) See Land Registry (Middlesex Deeds) Act, 1891, Sched. I. r. 2, and Rules of 1892, r. 6; 47 & 48 Vict. c. 54, s. 6 (Yorkshire).

because until then he had not got the consideration for which he had stipulated (r); and also that the covenants could not be enforced by the devisee of the lessor, the lessee having, at law, a mere tenancy at will, which ceased on the death of the lessor (s). But now, in cases to which the doctrine of Walsh v. Lonsdale (t) applies, the nature and extent of the tenant's liability will fall to be determined, it is conceived, in accordance with that doctrine. Where there is a demise purporting to be by tenant for life and remainderman, "according to their respective estates and interests," and only the tenant for life executes, he may sue on the covenants (u).

Effect of nonexecution by lessee.

Effect of alterations in a lease after execution.

Until the lessee has executed the lease or a counterpart there is, of course, no legal covenant on his part; but if he takes possession of the demised property under and by virtue of the lease, he is in equity bound, it is conceived, to perform and observe the lessee's covenants and the conditions of the lease generally (x). If any alteration is made in a lease after it has been executed (y) by the lessor and lessee, it will require a fresh stamp; unless, perhaps, in cases where such alteration is made with the consent of both parties, and is merely an expression of what was before implied, as, for instance, the addition of the words "house and buildings" to a proviso for giving up a farm (z). And, generally, a fresh stamp is required for a document which varies the original agreement so far as to form a new or substituted contract (a). So a memorandum indorsed on a lease after it has been executed must be stamped as a new instrument (b).

If a deed is altered, after execution, in a material point by one party without the privity of the other, it thereby becomes void (c), but not if the alteration is immaterial (a). If an agreement for

(r) Swatman v. Ambler (1852), 8 Ex. 72; Pitman v. Woodbury (1848), 3 Ex. 4. See Toler v. Slater (1867), L. R. 3 Q. B. p. 45..

(s) Cardwell v. Lucas (1836), 2 M. & W. 111.

(t) (1882), 21 Ch. D. 9. See supra, p. 81.

(u) How v. Greek (1864), 3 H. & C. 391. As to defect of acknowledgment in a lease by husband and wife of the wife's lands, see Toler v. Slater (1867), L. R. 3 Q. B. 42.

(x) See Formby v. Barker, [1903]

2 Ch. 539, at pp. 547, 549, 555.

(y) An alteration made in a lease

by deed, after the deed is signed, but before it is sealed and delivered, is part of the deed: Lyburn v. Warrington (1816), 1 Stark. 162.

(z) Doe v. Houghton (1827), 1 Man.

& Ry. 208.

(a) Atherstone v. Bostock (1841), 2 M. & Gr. 511.

(b) Reed v. Deere (1827), 7 B. & U. 261; Hill v. Patton (1807), 8 Kast, 373; French v. Patton (1808), 9 East, 351.

(c) Pigot's Case (1615), 11 Rep. 26 b. (d) $Aldous \ \nabla$. Cornwell (1868), L. R.3 Q. B. 573. See notes to Master V. Miller, 1 Sm. L. C. 11th ed. 767.

a lease be vitiated by alteration, it may be received in evidence to show the terms of occupation (e); and a deed may be received where the alteration does not affect the matter which the deed is produced to prove (f). Since a deed cannot, save with the consent of the parties, be altered after execution without fraud or wrong, the presumption, if an alteration appears, is that it was made before execution (g). An alteration made before execution by the lessor and lessee does not affect the validity of the deed, although it has been previously executed by other persons parties thereto, provided that such parties are not affected (h).

When a memorandum is added to a lease previously to execution so as to be incorporated in it, the whole constitutes one entire instrument (i), and if there is a variance the memorandum will control the lease (k).

Where an agreement for a tenancy from year to year is altered to one for a term of one year, the alteration is treated as extending to covenants which are applicable only to a yearly tenancy, and these are considered as expunged or as only operative in the event of the tenancy continuing (l).

Registration.

A memorial of a lease by deed of lands situate in the counties Registration. of Middlesex (p) or York, including the town of Kingston-upon-Hull, should be entered on the respective registers provided for 54 & 55 Vict. the purpose; unless in Middlesex the lease is at a rack-rent, or unless in either county it does not exceed twenty-one years, and is accompanied by actual possession, i.e. where the lessee is also the occupier of the premises (q).

Registration of an assignment will not supply the want of

(e) Hutchins v. Scott (1837), 2 M. & ₩. 809.

(f) E. of Falmouth v. Roberts (1842), 9 M. & W. 469.

(g) Doe v. ('atomore (1851), 16 Q. B. 745.

(h) Hall v. Chandless (1827), 4 Bing. 123.

(i) See Griffin v. Stanhope (1618), Cro. Jac. p. 456.

(k) Week v. Escott (1821), 9 Price, 595. But see Frogley v. E. Loveluce (1859), Johns. 333.

(l) Strickland v. Maxwell (1834), 2 Cr. & M. 539.

(m) The Middlesex Registry Act,

1708.

(n) The Land Registry (Middlesex Deeds) Act, 1891. As to the form of the memorial, see Schedule I. to that Act, and the Rules of 1892; Reg. v. Registrar of Middlesex (1850), 15 Q. B. 976.

(o) The Yorkshire Registries Act, 1884.

(p) Instruments relating to leases of chambers in the Inns of Court are exempted from the provisions of 7 Anne, c. 20. See sect. 17.

(q) Dart's V. & P. 6th ed. II. 769. See Fury v. Smith (1822), 1 Huds. & Br. 735, 751.

7 Anne, c. 20(m), and c. 64(n)(Middlesex); 47 & 48 Vict. c. 54(0)(Yorkshire and Hull).

registration of the lease (r). It would seem that a lease which binds the lessee to build or execute improvements on the demised land cannot be considered a lease at a rack-rent within the exception of these Acts (s). It has been suggested that a lease is within the exception notwithstanding that the rent ceases to be a rack-rent in consequence of the increase in the value of the property (t); but the doctrine cannot safely be acted on (s).

Copyholds are excepted from the Registry Acts, but it is necessary to register such leases of copyhold estates as would require registration if the estate were freehold, the lease not being a copyhold interest (u).

Under 15 Car. 2, c. 17, s. 8, no lease of lands within the Bedford Level, except leases for seven years or under in possession, is of any force but from the time it is entered with the registrar. But, notwithstanding the general terms of this enactment, failure to register does not avoid the lease as between the parties: it only postpones it to persons deriving title subsequently and registering (x).

Registration under the Land

Registration of title to leasehold land is governed by the Land Transfer Acts, 1875 and 1897 (y), and by the Land Transfer Transfer Acts. Rules, 1903(z), and is either voluntary or compulsory. The effect is that a person entitled to leasehold land held under a lease for a life or lives, or determinable on a life or lives, or for a term of years of which more than twenty-one are unexpired, may be registered as proprietor of the leasehold land with an absolute title, with a good leasehold title, with a qualified title, or with a possessory title (a). And, in any district where registration has become compulsory, an assignment on sale of a lease or an underlease having at least forty years to run or two lives yet to fall in, and a grant of a lease or underlease for a term of forty years or more or for two or more lives, executed after the day on which registration became compulsory and capable of

⁽r) Honeycomb ∇ . Waldron (1737), 2 Str. 1064.

⁽s) Dart's V. & P. II. 769.

⁽t) Sugd. V. & P. 14th ed. 732.

⁽u) See Sugd. V. & P. 14th ed. 732; Rigge on Registration of Deeds, 87, note (m).

⁽x) Hodson \forall . Sharpe (1808), 10 East, 350.

⁽y) 38 & 39 Vict. c. 87; 60 & 61 Vict. c. 65.

⁽z) These Rules in effect repeal sects. 12, 14, 15, 16, 36, and 37 of the Act of 1875 entirely, and sects. 11 and 34 partially (r. 67).

⁽a) Act of 1875, ss. 11, 13; Rules of 1903, rr. 50—66. A sublease is, but a term created for mortgage purposes is not, to be deemed a lease within the meaning of the above-mentioned sect. 11: Act of 1897, Sched. I.

registration, operate only as agreements, and do not pass any legal estate to the assignee or lessee unless or until he is registered as proprietor of the lease or underlease (b). When leasehold land has once been registered, transfers of it must be made in the manner prescribed by the rules, and must be registered (c).

Where freehold or leasehold land has been registered, the registered title is subject to any leases or agreements for leases and other tenancies for terms not exceeding twenty-one years, or for any less estate, provided there is an occupation under such There is no necessity, therefore, to enter notice tenancies (d). of such tenancies on the register. But where the term is for a life or lives, or is determinable on a life or lives, or exceeds twenty-one years, or where the occupation is not in accordance with the lease or agreement, notice of the lease or agreement should be entered on the register against the lessor's title (e).

The fees payable on applications, &c., under the Land Transfer Acts are regulated by the Land Transfer Fee Order, 1903, which came into operation on the 1st of January, 1904.

Custody of Lease.

During the continuance of the demise, the instrument of lease Custody of belongs to the lessee, and the counterpart to the lessor (f); and the lessee is entitled to possession of the lease after his interest in the demised premises has expired or been determined by forfeiture (g)—at any rate, where the lease contains covenants by the lessor (f). So, too, where a lessee surrenders, by operation of law, the term of an original lease, on the grant to him of a new term, he is entitled to retain the original lease (h). Where a lease is in the hands of the tenant, and no counterpart can be found, it seems that the landlord is entitled to inspect and take a copy of the lease (i). If an occupier against whom an action of ejectment for a forfeiture is brought has no duplicate or copy of the lease under which the claim is made, he may,

⁽b) Rules of 1903, rr. 68—70. (c) Act of 1875, ss. 34, 35, 38, and 39; Act of 1897, Sched. I.; Rules of 1903, rr. 138—143.

⁽d) Act of 1875, s. 18 (7).

⁽e) Act of 1875, s. 50; Act of 1897, Sched. I.

⁽f) See the judgment in Hall v. Bull (1841), 3 M. & Gr. p. 253.

⁽g) Hall v. Ball, 3 M. & Gr. 242;

Elworthy ∇ . Sandford (1864), 3 Н. & С. 330.

⁽h) Knight v. Williams, [1901] 1 Ch. 256.

⁽i) Doe v. Slight (1832), 1 Dowl. 163, overruling Woodcock v. Worthington (1827), 2 Y. & J. 4; Portmore v. Goring (1827), 4 Bing. 152. See Elworthy v. Sandford, 34 L. J. Ex. 44, per Martin, B.

independently of the Evidence Act, 1851 (k), obtain from a Judge an order to inspect and take a copy of the lease (l).

Costs.

Costs of preparing lea**se**.

The usual course is for the lessor's solicitor to prepare the lease, and for the lessee to pay the costs (m). But where the lease is taken from a lessor and concurring parties represented by separate solicitors, the lessee is not liable, in the absence of express or implied agreement, to pay more than one set of costs(n). If the lease is prepared by the solicitor of the lessor, who is not employed by the lessee for that purpose, the lessor is the person liable, in the first instance, to pay the solicitor, but the lessor can recover the amount from the lessee whether the lessee takes up the lease or refuses to do so (o), and slight evidence will be accepted to make the lessee liable directly to the lessor's solicitor, e.g. if he has himself given instructions to the solicitor (p). Where an agreement provides that a lease shall be prepared at the sole expense of the lessor, the lessor prepares it as well as pays for it (q).

The lessor must bear the expense of the counterpart unless the lessee has expressly agreed to pay for it (r). Frequently, however, the lessee agrees to pay all the costs of both lease and counterpart, and he is entitled to have the bill taxed (s).

Where a lessee obtains the usual third party order to tax the lessor's solicitor's bill of costs in relation to the preparation of the lease, the order does not enlarge the scope, or otherwise alter the nature, of the lessee's liability. Even on a third party taxation, the Master is bound to look at the nature of the items, and to consider whether, apart from the order, the lessee is liable to pay them (t).

(k) 14 & 15 Vict. c. 99, s. 6.

(l) Doe v. Roe (1852), 1 E. & B. 279. (m) Grissell v. Robinson (1836), 3

Scott, 329; 3 Bing. N. C. 10.

(n) Re Fletcher v. Dyson, [1903] 2 Ch. 688, 692. In this case the lessor's solicitor had included in his bill of costs the costs of the concurring parties' solicitors, and, more than one-sixth having been taxed off the total amount, it was held that he must pay the costs of the taxation, although less than one-sixth had been taxed off his own costs.

(o) Baker v. Merryweather (1849),

2 C. & K. 737; Grissell v. Robinson, supra.

(p) Smith v. Clegg (1858), 27 L. J. Ex. 300; Webb v. Rhodes (1837), 3 Bing. N. C. 732.

(q) Price v. Williams (1836), 1

M. & W. p. 13.

(r) Jennings v. Major (1837), 8 C. & P. 61. See Re Negus, [1895] 1 Ch. 73, p. 81.

(s) Re Newman (1867), L. B. 2 Ch. 707.

(t) Re Gray, [1901] 1 Ch. 239, 248, in which case Re Negus ([1895] 1 Ch. 73) was considered and applied.

The costs of the lessor's and lessee's solicitors respectively are Remuneraregulated by the general order under the Solicitors' Remuneration Act, 1881 (u). In respect of leases and agreements for Clause II. (b). leases (other than mining leases), when the transactions shall have been completed, the remuneration of the solicitor having the conduct of the business is to be that prescribed in Part II. of Schedule I. In respect of business not completed, and in Clause II. (c). respect of mining leases or licences or agreements therefor, and of assignments of leases not by way of purchase or mortgage, the remuneration is to be regulated according to the system existing before the order as altered by Schedule II. But in Clause VI. cases where Schedule I. applies, a solicitor may, before undertaking any business (x), by writing under his hand, communicated to his client, elect to be remunerated according to the former system as altered by Schedule II.

The fee prescribed by Schedule I., Part II., to be paid to the lessor's solicitor "for preparing, settling, and completing lease and counterpart," includes the solicitor's remuneration in respect of negotiations which lead up to, and the preparation of the agreement which precedes, the lease (y); but it does not include negotiations carried on by the solicitor as to the letting of property with persons other than the person to whom the lease is ultimately granted (z).

The term "agreements for leases" as used in the schedule Agreements means agreements on which the parties intend to rely as sufficient for the purpose of stating the terms on which the property was held without having formal leases executed (a); and it includes an agreement for a tenancy for less than three years at a rackrent, although such an agreement need not be in writing (b).

The scale does not apply unless the work in respect of which the fee is prescribed has been substantially done (c), and the fees

It was held, too, that the lessee was not liable to pay the fees of a mining expert employed by the lessor. Re Fletcher and Dyson, [1903] 2 Ch. at p. 694, where the charges of the lessor's surveyor were, as against the

lessee, disallowed. (u) 44 & 45 Vict. c. 44.

(x) Re Allen (1886), 34 Ch. D. 433.

(y) Savery v. Enfield Local Board, [1893] A. C. 218; Re Field (1885), 29 Ch. D. 608; Re Emmanuel and Simmonds (1886), 33 Ch. D. 40.

(z) Re Martin (1889), 41 Ch. D. **381**.

(a) Re Emmanuel and Simmonds (1886), 33 Ch. D. 40, per Cotton, L.J., at p. 47.

(b) Re Negus, [1895] 1 Ch. 73.

(c) Re Lacey & Son (1883), 25 Ch. D. 301, per Cotton, L.J., at p. 309; Re Hickley and Steward (1885), 33 W. R. 320; Wellby v. Still, [1895] 1 Ch. 524.

for leases do not apply to a transaction which, though carried out by means of a lease, is substantially a sale (d).

Premium.

The further remuneration payable under r. 5 of the rules applicable to Part II. of Schedule I., where the consideration consists partly of a money payment or premium (e), does not entitle the solicitor to claim the negotiating fee as on a sale (f); but otherwise it gives him exactly the same remuneration as he could claim under Part I. of the schedule on a sale (q), and where the rent and the premium are small, he is entitled to the minimum fee on each (h).

Estate agent's commission.

One of the modes in which capital money arising under the Settled Land Act, 1882, is applicable is (sect. 21 (x.)) the "payment of costs, charges, and expenses of or incidental to the exercise of any of the powers" of the Act. The language of this enactment is wide enough to justify the payment out of such capital moneys of the commission charged by an estate agent for procuring the letting of portions of a settled estate on building leases (i).

Entry.

Entry of lessee.

At common law no lease for years, whether with or without any reservation of rent, is complete till actual entry has been made by the lessee (k). A lease in the usual form, which is a common law demise, does not of itself vest any estate in the lessee, but only gives him a right of entry on the tenement, called his interest in the term, or interesse termini (l).

Future lease.

The right under a lease to commence immediately (not being a lease the possession under which is executed by the Statute of Uses) is, until entry by the lessee, an interesse termini only, and so is the right under a lease to commence at a future time, as upon the expiration of an existing lease (m); and the same rules

(d) As where a sale of part of property held under a lease is carried out by means of an underlease: Still v. Webb (1895), 45 W. R. 170.

(e) Re Hasties and Crawfurd (1888), 36 W. R. 572.

- (f) Re Horn and Francis, [1896] 2 Ch. 797.
 - (g) Re Robson (1890), 45 Ch. D. 71.
- (h) Re Hellard and Bewes, [1896] 2 Ch. 229.
- (i) Re Maryon Wilson's Settled Estates, [1901] 1 Ch. 934.
 - (k) Bac. Abr. (M.) p. 844.

(1) 2 Black. Com. 144; Co. Litt. 46 b. See the judgment in Copeland v. Stephens (1818), 1 B. & A. at p. 605.

(m) Joyner v. Weeks, [1891] 2 Q. B. 31. Hence a lease made to commence after the expiration of a previous lease does not operate as an assignment of the reversion expectant on such lease, but only confers an interesse termini until its expiration: Smith ∇ . Day (1837), 2 M. & W. 684; Blatchford v. Cole (1858), 5 C. B. N. S. 514.

are applicable to both. Each is a right only, not an estate. The whole estate, notwithstanding such right, remains in the lessor. It follows that in neither case will an assignment by the lessee to the lessor operate as a surrender, nor will a release from the lessor to the lessee operate by way of enlarging the estate; though such a release will avail to extinguish the rent, if any, reserved upon the lease (n). The right may be extinguished by a release by the lessee to the lessor (o), and may be granted as a right by the lessee to any other person (p); but it cannot be conveyed as an estate. Hence, if the future lessee attains a present freehold estate in the premises, his lease in reversion will not be merged (q); and since the lessor, after granting a future lease, retains his reversion, he continues entitled to distrain for rent due from the first lessee (r).

A lessee who has accepted a reversionary lease of, for instance, a licensed public-house cannot escape from his bargain on the ground that, before the time when his lease becomes a lease in possession, the licence has been lost (s).

A concurrent lease differs in this respect from a lease in Concurrent reversion, and, if granted by deed, it transfers the immediate reversion (t), and the lessor cannot afterwards, during the continuance of the second lease, recover rent against the first lessee (u). But the concurrent lease, if made by parol, and if it is for a term less than the term of the original lease, is absolutely void, and though the original lease affected only part of the premises included in the concurrent lease, the rent due under the latter cannot be apportioned (x).

A lease to two persons at a time when one of them is in possession as tenant from year to year vests the possession in both, and does not give a mere interesse termini (y).

At any time during the term, even after the death of the Effect of lessor, the lessee or his assignee, or personal representatives,

```
(n) Co. Litt. 46 b, 270 a. See
Hyde v. Warden (1877), 3 Ex. D.
72, 84.
```

T. L. R. 249; 64 J. P. 184.

⁽v) Judgment in Doe v. Walker (1826), 5 B. & C. at p. 118. See Saffyn's Case (1606), 5 Rep. 123 b.

⁽p) Co. Litt. 46 b. (4) Doe v. Walker (1826), 5 B. & C. 111.

⁽r) Smith v. Day (1837), 2 M. & W. 684. See per Parke, B., 694, 699.

⁽s) Blum v. Ansley (1900), 16

⁽t) Bac. Abr. (N.) p. 848; Shep. Touch. p. 276; Palmer v. Thorpe (1589), Cro. Eliz. 152.

⁽u) Harmer v. Bean (1853), 3 C. & K. 307. Cf. Wordsley Brewery Co. v. Halford (1903), 90 L. T. 89.

⁽x) Neale v. Mackenzie (1836), 1 M. & W. 747.

⁽y) Keyse v. Powell (1853), 2 E. & B. 132.

may perfect the lease by entry (z). Until this has been done, neither the lessee nor his assignee can maintain an action of trespass in respect of the demised premises (a); but he may bring an action of ejectment (b). An action for use and occupation cannot be maintained against him until he has entered (c).

(7) RECTIFICATION OF LEASE.

A lease will be rectified where it was executed under a mutual mistake (d), but it has been held that parol evidence of mistake, if denied, must be corroborated by writing (e). Where there is a mistake on one side only, the party mistaken is not entitled to have the lease rectified, but he may have it rescinded, unless the other party consents to rectification (f). Where a lease is executed in accordance with a written contract, it cannot be rectified on evidence of an agreement outside the contract (g).

SECT. III.—MINING LEASES AND LICENCES.

(1) MINING LEASES.

Differences between mining and other leases.

Mining leases differ in some respects so materially from other leases that it may be convenient to give them separate consideration.

"Although," said Lord Cairns in Gowan v. Christie (h), "we speak of a mineral lease, or a lease of mines, the contract is not. in reality, a lease at all in the sense in which we speak of an agricultural lease. There is no fruit; that is to say, there is no increase; there is no sowing and reaping in the ordinary sense of

Stephens (1818), 1 B. & A. at p. 606.

(a) Bac. Abr. (M.) p. 844; Turner v. Cameron's, &c., Co. (1850), 5 Ex. 932; Wheeler ∇ . Montefiore (1841), 2 Q. B. 133; Harrison v. Blackburn (1864), 17 C. B. N. S. 678. Wallis v. Hands [1893], 2 Ch. 75, distinguishing Gillard v. Cheshire Lines Committee (1884), 32 W. R. 943.

(b) Doe v. Day (1842), 2 Q. B. 147. See Harrison v. Blackburn, loc. cit.

p. 693. (c) Edge v. Strafford (1831), 1 Cr. & J. 391; Lowe v. Ross (1850), 5 Ex. 553. See Towne v. D'Heinriche

(1853), 13 C. B. 892.

(d) Paget v. Marshall (1884), 28

(z) Co. Litt. 46 b; Copeland v. Ch. D. 255; Murray v. Parker (1854), 19 Beav. 305. As to rectifying a lease of an infant's property, see Seaton v. Staniland (1862), 4 Giff. 61. As to setting aside a lease for concealment of a fact touching the title, see Mostyn v. West Mostyn, &c., Co. (1876), 1 C. P. D. 145.

(e) Mortimer v. Shortall (1842), 2 Dr. & War. 363.

- (f) Garrard v. Frankel (1862), 30 Beav. 445; Paget v. Marshall, supra: D. of Sutherland v. Heathcote, [1892] 1 Ch. 475.
- (q) Davies ∇ . Fitton (1842), 2 Dr. & War. 225.
- (h) (1873), L. R. 2 H. L. Sc. 273, at p. 283.

the term; and there are no periodical harvests. What we call a mineral lease is really, when properly considered, a sale out and out of a portion of land. It is liberty given to a particular individual, for a specific length of time, to go into and under the land, and to get certain things there if he can find them, and to take them away, just as if he had bought so much of the soil." Again, "There is a considerable difference between a building and a mining lease: in the former case an addition is made to the estate, but in the latter the whole is an abstraction "(i). And again, "A mining lease is really, in its essence, rather a sale at a price payable by instalments than a demise properly so called. It is also to be borne in mind that the object of a mining lease is to enable the lessee to remove for his own benefit the minerals demised, and widely differs from that of a lease of a portion of the surface, where the lessee is expected, after enjoying the use and occupation of the demised property for a term of years, to deliver it up to the lessor in the same state and condition as at the commencement of the lease. The rent reserved by a mining lease rather resembles an instalment of purchase-money for the demised minerals than what is understood by rent reserved on an ordinary demise of the surface." Indeed, "the use of the word 'rent' in the case of a mining lease is somewhat misleading. It is really purchase-money for coal worked " (k).

In view of the foregoing characteristics of mining leases, it is not surprising that, except in the case of absolute beneficial owners of land, the granting of such leases has long been and is restricted and regulated by statutory enactments, as well as by special provisions embodied in deeds and wills effecting settlements of land. Some of these statutory enactments and special provisions have already been referred to (1). Nowadays the Provisions of legislation on this subject which probably is of the greatest the Settled, Land Acts. practical importance, and governs or affects most of the mining leases granted by limited owners, is that contained in the Settled Land Acts, 1882 to 1890. In those Acts, and particularly in the

⁽i) Per Lord Langdale, M.R., in Wood v. Patteson (1847), 10 Beav. 541, at p. 543.

⁽k) Per Collins, M.R., and Stirling and Cozens-Hardy, L.JJ., in Re Aldam's S. E., [1902] 2 Ch. at pp. 56, *5*8, 63.

⁽¹⁾ Supra, pp. 27, 28, 41, 50, 52.

As to the inability of private trustees, apart from statutory or special power, to grant mining leases, see Wood v. Patteson (1847), 10 Beav. 541, observed upon and distinguished in Fitzpatrick v. Waring (1882), 11 L. R. Ir. at pp. 46, 51.

Act of 1882, there are a good many important enactments with respect to mining leases.

Reference has already been made (m) to sect. 6 of the Act of 1882, which empowers a tenant for life to lease the settled land, or any part thereof, for any purpose whatever, whether involving waste or not, for any term not exceeding, in the case of a mining lease, sixty years.

As to rent.

Then, as to the reservation of rent in a mining lease granted under the Settled Land Acts, there are the following statutory provisions (n):

- (i) The rent may be made to be ascertainable by, or to vary (o) according to, the acreage worked, or by or according to the quantities of any mineral or substance gotten, made merchantable, converted, carried away, or disposed of, in or from the settled land, or any other land, or by or according to any facilities given in that behalf (p).
- (ii) The rent may be made to vary (o) according to the price of the minerals or substances gotten or any of them; and such price may be the saleable value or the price or value appearing in any trade or market or other price list or return from time to time, or may be the marketable value as ascertained in any manner prescribed by the lease (including a reference to arbitration), or may be an average of any such prices or values taken during a specified period (q).
- (iii) A fixed or minimum rent (r) may be made payable, with or without power for the lessee, in case the rent, according to acreage or quantity, in any specified period does not produce an amount equal to the fixed or minimum rent, to make up the deficiency (s) in any subsequent specified period, free of rent other than the fixed or minimum rent (t). And a mining lease may be made partly in consideration of the lessee having executed, or his agreeing to execute, on the

(m) Supra, p. 41.

to mining no less than to other leases. See per Stirling, L.J., in Re Aldam's S. E., [1902] 2 Ch. at pp. 51, 62.

(o) See infra, p. 204.

(p) S. L. Act, 1882, s. 9 (1) (i).

(q) S. L. Act, 1890, s. 8. (r) See infra, p. 203.

(s) See infra, pp. 205, 206. (t) S. L. Act, 1882, s. 9 (1) (ii).

⁽n) It must also be borne in mind that two general requirements of the Act of 1882—viz. (i) that in a lease the best rent must be reserved which can reasonably be obtained, regard being had to all the circumstances of the case (sect. 7 (2)); and (ii) that due regard must be had to the interests of all parties entitled under the settlement (sect. 53) — apply

accordance

with local

custom. S. L. Act,

land leased an improvement authorized by the Act of 1882 for or in connection with mining purposes (u).

The tenth section of the Act of 1882 further enacts, as to Leases in mining leases, that where it is shown to the Court, with respect to the district in which any settled land is situate, either (i) that it is the custom for land therein to be leased for mining 1882, 8. 10. purposes for a longer term or on other conditions than the term or conditions specified in that behalf in the Act, or (ii) that it is difficult to make leases for mining purposes of land therein, except for a longer term or on other conditions than the term or conditions specified in that behalf in the Act, the Court may, if it thinks fit, authorize the tenant for life to make from time to time, or in any particular case, leases or a lease of the settled land in that district, or part thereof, for any term at rents or a rent secured by condition of re-entry or otherwise as in the order of the Court expressed; and that thereupon the tenant for life, and such of his successors in title as therein mentioned, may make in any case, or in the particular case, a lease of the settled land, or part thereof, in conformity with the order.

The next section of the same Act(x) deals with the application Application of mining rents as follows:—

"Under a mining lease, whether the mines or minerals leased S. L. Act. are already opened or in work or not, unless a contrary intention is expressed in the settlement, there shall be from time to time set aside, as capital money arising under this Act, part of the rent as follows—namely, where the tenant for life is impeachable for waste in respect of minerals, threefourths of the rent, and otherwise one-fourth part thereof, and in every such case the residue of the rent shall go as rents and profits."

The case of the surrender (y) of a mining lease is expressly Surrender. provided for by sect. 13 of the Act of 1882, whereby it is (amongst other things) provided as follows:—

"(1) A tenant for life may accept, with or without consideration, a surrender of any lease of settled land, whether made under this Act or not, in respect of the whole land leased, or any part thereof, with or without an exception

of mining rents.

1882, s. 11.

S. L. Act. 1882, s. 13.

⁽u) S. L. Act, 1882, s. 9 (2).

⁽x) Ib. s. 11.

⁽y) As to surrenders generally, see infra, Chap. IV. Sect. 2 (2).

of all or any of the mines and minerals therein, or in respect of mines or minerals or any of them.

- (2) On a surrender of a lease in respect of part only of the land or mines and minerals leased, the rent may be apportioned.
- (3) On a surrender, the tenant for life may make of the land or mines or minerals surrendered, or of any part thereof, a new or other lease, or new or other leases in lots.
- (4) A new or other lease may comprise additional land or mines and minerals, and may reserve any apportioned or other rent."

The value of the lessee's interest in the lease surrendered may be taken into account in determining the rent and other terms to be reserved by and contained in the new or other lease, and that lease must be in conformity with the Act(z).

Surface and minerals apart. S. L. Act, 1882, s. 17 (1). It is, further, expressly enacted by sect. 17 (1) of the Act of 1882 that a mining lease may be made "either of land, with or without an exception or reservation of all or any of the mines and minerals therein, or of any mines and minerals, and in any such case with or without a grant or reservation of powers of working, wayleaves or rights of way, rights of water and drainage, and other powers, easements, rights, and privileges for or incident to or connected with mining purposes, in relation to the settled land, or any part thereof, or any other land."

Definitions of "rent" and "mines and minerals." S. L. Act, 1882, s. 10. In connection with the foregoing provisions of the Act of 1882 with respect to mining leases, it is to be borne in mind that in that Act(a)—

- "(ii) 'Rent' includes yearly or other rent, and toll (b), duty, royalty (c), or other reservation, by the acre, or the ton, or otherwise; and, in relation to rent, payment includes delivery" (d), and—
- "(iv) 'Mines and minerals' mean (e) mines and minerals whether already opened or in work or not, and include all minerals and substances in, on, or under the land, obtainable by underground or by surface working; and mining purposes

(z) S. L. Act, 1882, s. 13 (5) (6).

(a) Ib, s. 10.

(b) The word "toll" here probably means a wayleave rent paid for the passage of minerals over other land of the lessor: Hood & Challis, Conveyancing, &c., Acts, 5th ed. p. 198.

(c) See infra, p. 203.

(d) Sc. because mineral royalties or other reservations are sometimes to be rendered in kind. See infra, p. 203.

(e) See infra, p. 198.

include the sinking and searching for, winning, working, getting, making merchantable, smelting, or otherwise converting or working for the purposes of any manufacture, carrying away, and disposing of mines and minerals in or under the settled land, or any other land, and the erection of buildings, and the execution of engineering and other works, suitable for those purposes; and a mining lease is a lease for any mining purposes or purposes connected therewith, and includes a grant or licence for any mining purposes."

Several questions which have arisen out of the above statutory provisions concerning mining leases have been solved by judicial It is now settled that, inasmuch as sect. 6 of the Lease of decisions. Act of 1882 expressly empowers the tenant for life to grant surface, or leases of the settled land "or any part thereof," it empowers rice versa. him to grant a lease of the mines and minerals without the surface, or vice versa; and the above-quoted words of sect. 17 of the same Act(f) may be regarded as having been inserted merely by way of extra precaution (g).

mineswithout

It was decided by the Court of Appeal in a recent case (h) Minimum and that, under the Settled Land Acts, a tenant for life had power to grant a mining lease reserving a minimum rent not commencing until the second year of the term and increasing yearly until the fifth year; also that he had power to insert in the lease a proviso for the cesser of the minimum rent when all the coal demised and workable had been paid for at the acreage rent reserved; and that the lease might validly contain a wayleave for foreign coal, to continue after the above cesser at a nominal Incidentally, it was pointed out in the judgments (i) rent. that, though the Settled Estates Act, 1877, is still in force, its provisions have very little bearing upon the construction of, and cannot operate to cut down, the Settled Land Acts, which, as was explained in Bruce v. Marquess of Ailesbury (j), rest on a very different principle.

other rents.

As regards the division of the rent reserved by a mining Proportion lease, one-fourth only is required by sect. 11 of the Act of 1882 to be set apart as capital, except where the tenant for life is

of rent to be capitalized.

⁽f) Supra, p. 196. (y) Re Gladstone, Gladstone v. Gladstone (C. A.), [1900] 2 Ch. 101, 105, 106, overruling the contrary decision of Kekewich, J., in Re Newell and Nevill's Contract, [1900]

¹ Ch. 90. See, too, Re Duke of Rutland's Settled Estates, [1900] 2 Ch. 206.

⁽h) Re Aldam's S. E., [1902] 2 Ch. 46.

⁽i) $\lceil 1902 \rceil$ 2 Ch. at pp. 56, 64. (j) [1892] A. C. 356, at p. 364.

"impeachable for waste in respect of minerals." The word "minerals," as there used, cannot mean any minerals whatsoever. Some limitation must be put upon it, and the right interpretation is conceived to be "minerals the subject of such a lease as is contemplated by sect. 11." The tenant for life need not be expressly made by the settlement unimpeachable for waste in order to obtain the benefit of the section. A tenant for life may work open mines, although no express power to do so is conferred by the settlement; his title to work such mines being derived from the intention of the settlor, inferred from the use made of the property previously to the settlement. Accordingly, a tenant for life entitled to work open mines is not impeachable for waste in respect of the minerals got from such mines, and he may therefore grant a lease of them upon the terms of setting aside as capital one-fourth only of the rent (k).

Earl of
Lonsdale v.
Lowther.

In Earl of Lonsdale v. Lowther (1) the will of a testator, who died in the year 1876, contained a clause empowering every tenant for life, "as and when he shall be entitled to the possession or the receipt of the rents and profits" of the settled estates, to grant mining leases, reserving the best rents "by the acre, ton, or otherwise" that could be reasonably gotten. B. was the second tenant for life under the settlement made by the will, and while his life-estate was reversionary he sold it. life-tenant died in 1882, and after that year B. granted mining leases of parts of the estates "in exercise of every power" enabling him. It was held (i) that the above-quoted words "as and when," &c., meant "as and when his life estate shall be in possession," and B. could validly exercise the leasing power notwithstanding his alienation of his life-estate; (ii) that the reservation in the leases, in accordance with the custom of the country, of rents varying with the selling price of the minerals was authorized by the power and valid; and (iii) that the leases must be taken to have been granted under the power in the will, which was prior in point of time to the powers conferred by the Settled Land Acts, and accordingly no part of the rents need be set apart as capital.

Meaning of "mine" and "minerals."

In passing from the field of special legislation to that of general law, it may be convenient to compare the meanings

⁽k) Re Chaytor, [1900] 2 Ch. 804, at pp. 809—811.

(l) [1900] 2 Ch. 687, referring, on Rankin (1822), Sugd. Powers, 8th ed. App. pp. 895, 899.

assigned to "mines and minerals" in the Settled Land Act, 1882 (m), with the meanings ordinarily attributable to those words. The primary meaning of mine is "vein or seam" (n); and when unopened mines are spoken of, the term "mine" means nothing more nor less than "vein or seam" (o). The word is, however, commonly (p) used in mining leases to include both the vein or seam and the subterranean excavations made to win it (q). In the latter sense it is not restricted to workings of coal or substances popularly called minerals. Underground workings of limestone (r) or clay (s) are mines. But to constitute a mine the working must be underground, and not an open working on the surface (t).

Minerals primâ facie include every substance which can be got from beneath the surface of the earth for the purpose of profit (u), whether from a mine or by open working (x); not only minerals usually so called, but clay (y), china clay (z), every kind of stone (a), brick earth (b), gravel and sand (c), and coprolites

(m) See supra, p. 196.

(n) Abinger v. Ashton (1873), L. R. 17 Eq. p. 369.

(v) Ramsay v. Blair (1876), 1 App.

Cas. p. 705.

(p) Danvill v. Roper (1855), 3 Drew. 299; Bell v. Wilson (1866), 1 Ch. p. 308.

(q) Midland Ry. Co. v. Haunch-wood, &c., Co. (1882), 20 Ch. D.

p. 555.

- (r) See R. v. Sidgley (1831), 2 B. & Ad. 65. For the unusual case of a mine of freestone, see R. v. Dunsford (1835), 2 A. & E. 568.
- (s) R. v. Brettel (1832), 3 B. & Ad. 424.
- (t) Tucker v. Linger (1882), 21 Ch. D. p. 36; Bell v. Wilson (1865), 2 Dr. & Sm. p. 399; Lord Provost of Glasgow v. Fairie (1888), 13 App. Cas. 657, per Lord Macnaghten, p. 686; but see per Lords Watson and Herschell, pp. 673, 680.
- (a) Sc. unless there is something in the context, or in the nature of the transaction, to induce the Court to give the word a more limited meaning: Hext v. Gill (1872), L. R. 7 Ch. at p. 712. See Bell v. Wilson (1865), 2 Dr. & Sm. p. 398; Robinson v. Milne (1884), 53 L. J. Ch. 1070; Tucker v. Linger (1883), 8 App. Cas. p. 512. And cf. Lord Provost of

Glasgow v. Fairie (1888), 13 App. Cas. 657; Johnstone v. Crompton, [1899] 2 Ch. 190.

(x) Midland Ry. Co. v. Haunch-wood, &c., Co. (1882), 20 Ch. D. p. 555.

(y) Errington v. Metrop. Ry. ('a. (1882), 19 Ch. D. p. 571; Salisbury v. Gladstone (1860), 6 H. & N. 127.

- (z) Hext v. Gill (1872), L. R. 7 Ch. 699. The rule enunciated in that case is good law, but it must bend to, or may be modified by, the circumstances of particular cases: Great Western Ry. Co. v. Blades, [1901] 2 Ch. 624, at pp. 631, 636, 638; approved (C. A.), Re Todd, Birleston & Co. and North Eastern Railway, [1903] 1 K. B. 603.
- (a) Midland Ry. Co. v. Cleckley (1867), L. R. 4 Eq. p. 25. See Bell v. Wilson (1866), L. R. 1 Ch. 303, 307; Micklethwait v. Winter (1851), 6 Ex. 644; E. of Rosse v. Wainman (1845), 14 M. & W. 859; aff. 2 Ex. 800.

(b) Tucker v. Linger (1882), 21 Ch. D. p. 36. See 8 App. Cas. 508; E. of Jersey v. Neath Guardians (1889), 22 Q. B. D. 555.

(c) See Earl Cowley v. Wellesley (1866), 1 Eq. 659; Errington v. Metrop. Ry. Co. (1882), 19 Ch. D. p. 571; Tucker v. Linger (1882), 21 Ch. D. p. 36.

beneath the surface (d); but not mounds of "tap-cinder" (e). The word will even include, prima facie, flints turned up in the ordinary course of ploughing (f). Where there is an exception of "mines and minerals," the prefixing of the word "mines" does not restrict the meaning of the word "minerals" (g).

Letting down the surface.

A grant or lease of minerals implies a power to get them and bring them to the surface (h); but if the lessee is to have the right to let down the surface, this either must be expressed, or must appear by a clear implication from other clauses of the lease; for, in the absence of agreement, express or implied, to the contrary, when a proprietor of the surface and the subjacent strata grants a lease of the whole or part of his minerals to a tenant, it is an implied term of that contract that support shall be given, in the course of working, to the surface of the land (i). Where mines were granted by deed, with power for the grantee and his assigns to work them, making reasonable compensation for all damage occasioned to the surface of the land or to the buildings thereon by the exercise of the power, it was held that damage by subsidence was not within the compensation clause, and hence the assigns of the grantee were liable to an action for damages for injury to the surface of the land due to subsidence caused by the working of the mines (k). But the lessee of underground strata is not liable for subsidence due to an excavation made by his predecessor in title prior to the date of the lease, and not to any act of the lessee (k).

The parcels in a mining lease.

The accurate description of the parcels (l) in a mining lease is a matter of very great importance. Where the proper construction of the description is disputable, as, for instance, where a demise comprised all such seams of coal within certain lands as were "workable as coal seams" (m), there is an open door for

(d) See Att.-Gen. v. Tomline (1877), 5 Ch. D. 750.

- (f) See the judgments in *Tucker* v. *Linger* (1882), 21 Ch. D. at pp. 36, 38, 39.
- (g) Hext v. (fill (1872), L. R. 7 Ch. at p. 712; Midland Ry. Co. v. Robinson (1887), 37 Ch. D. 386.
 - (h) Ramsey v. Blair (1876), 1 App.

Cas. p. 703. See, too, Rowbothum v. Wilson (1860), 8 H. L. C. p. 360.

(i) Davis v. Treharne (1881), 6 App. Cas. at p. 469. See, too, supra, p. 144.

- (k) Greenwell v. Low Beechburn Coul Co., [1897] 2 Q. B. 165. See, too, Davis v. Trehurne (1881), 6 App. Cas. 460; E. of Westmoreland v. New Sharlston Coul Co., [1899] 43 Sol. Journ. 569.
- (l) As to parcels generally, see supra, p. 132.
- (m) Varr v. Benson (1868), L. R. 3 Ch. 524, 530.

⁽e) I.e. refuse arising from the puddling of pig-iron which has been thrown upon land with the intention that it should again form part of the earth: Boileau v. Heath, [1898] 2 Ch. 301.

litigation. It is usual to specify in a schedule to the lease, and to delineate in a plan drawn upon or annexed to it, the particular portion of surface land within or under which the minerals demised are situate. Care should be taken to define as accurately as possible the boundaries of the mines intended to be demised. Where all the mines within or under a certain surface area are demised, it may be sufficient to describe them by reference to the surface boundaries; but where the demise is confined to particular veins or seams, the description should also clearly identify them (n). And, unless it is expressly stipulated that the lease plan shall be merely in aid or explanation of the description in the schedule, it should be seen that the plan is perfectly accurate.

The nature of the liberties which the lessee is to be entitled The liberties to exercise in respect of the surface and the subsoil should also be clearly stated in the lease. Prima facie, a lease of mines carries with it all absolutely necessary incidents of the demise, including all rights strictly necessary for the lessee's enjoyment of the subject-matters of the demise by working and getting the demised mines, and power to get at them (o), but nothing more. Accordingly, it is generally advisable to obviate possible disputes as to the extent and limits of the lessee's liberties by expressly defining them. The liberties requisite and appropriate differ, of course, in different cases; but they generally (p) comprise liberty and power for the lessee, his agents and workmen, to win (q), work, get, raise, and carry away the produce of the demised mines, to use existing pits and shafts, and, if necessary, to sink new ones, to use, maintain, and make various kinds of ways and works, to make use of or to divert streams, springs,

(n) Davis v. Shepherd (1866), L. R. 1 Ch. 410; Att.-Gen. v. Hammer (1858), 27 L. J. Ch. 837. As to what 18 a sufficiently definite description of seams of coal, see Haywood v. Cope (1858), 25 Beav. 140. See, too, Bainbridge on Mines, 5th ed.

ed. pp. 274, 309, 360.

(q) "Coal is won when it is put in a state in which continuous working can go forward in the ordinary way": per Lord Hatherley in Lewis v. Fothergill (1869), L. R. 5 Ch. at p. 111.

⁽o) "When anything is granted, all the means to attain it, and all the fruits and effects of it, are granted also. . . . By the grant of a ground is granted a way to it; . . . by the grant of mines is granted the power to dig them": Shep. Touch. 89. See, too, Bainbridge on Mines, 5th

⁽p) See, e.g., Key & Elphinstone's Precedents, 7th ed. Vol. I. pp. 802 et seq., and the appendix to Bainbridge on Mines, 5th ed.; also the wording of the leases in Dugdule v. Robertson (1857), 3 K. & J. 695, and in Jegon v. Vivian (1871), L. R. 6 Ch. at p. 743.

and watercourses; and in some cases the lessee may require liberty to work by instroke, or by outstroke.

Instroke and outstroke.

In relation to a mining lease, liberty of instroke is the liberty or right to work the demised mine by coming into it through an adjacent mine, and conveying the minerals gotten from the demised mine to the surface through a shaft in the adjacent mine; and liberty of outstroke is the converse of that, being the liberty or right to work an adjacent mine by going out to it from the demised mine, and conveying the minerals gotten from the adjacent mine to the surface through a shaft in the demised mine (r).

In the absence of any express stipulation on the subject, the lessee of a mine is entitled to work the minerals by instroke (s), if he can, as where he happens to be owner or lessee of an adjacent mine in which there is a shaft (t). And it may be greatly to his advantage so to work the first-mentioned mine; for, by so doing, he may be saved the expense of sinking a new shaft to it, or may escape payment of tolls (s) for the above-ground carriage of minerals gotten from it. Moreover, where working by instroke is practicable, and is not prohibited by the terms of the lease, it is not only an allowable but also a proper and workmanlike manner of working (u).

The right of the lessee of a mine to work by outstroke depends, apart from express stipulation, on whether the demise to him comprises, or does not comprise, the shaft and the means of communication between it and the boundary of the adjacent mine. In the former case he is prima facie entitled, in the latter he is prima facie not entitled, to work by outstroke (r).

Lessor's liberties.

The lessor, on his side, sometimes stipulates for liberties, such, for instance, as liberty to work and get any minerals which may be excepted from the demise, to use, cross, or join any ways for the time being belonging to or used by the lessee, and to enter and inspect the demised mines (x). It is obviously

(r) See Key & Elphinstone's Precedents, 7th ed. Vol. I. 804, and MacSwinney on Mines, 2nd ed. p. 230.

(s) Whalley v. Ramage (1862), 10 W. R. 315.

(t) Jegon v. Vivian (1871), L. R. 6 Ch. at p. 755.

(n) Jegon v. Vivian, supru, at p. 756; Lewis v. Fothergill (1869), L. R. 5 Ch. at p. 108.

(r) See MacSwinney on Mines,

2nd ed. pp. 231, 232. If, in the latter case, the lessee does work by outstroke, the lessor will or may, it is conceived, have a remedy against him, in virtue of the principle that, if A. without B.'s leave uses B.'s ground for his own purposes, he ought to pay for such user. C. Whitwham v. Westminster Brymbo, &c.. ('o., [1896] 2 Ch. 538, 542, 543.

(x) See the Precedents and appendix referred to supra, p. 201, note (p).

expedient, in any such case, to take care that the nature, extent, and limits of the lessor's rights and powers, and the terms, if any, on which he may exercise them, are clearly expressed in the lease.

The topic of exceptions and reservations generally has already The excepbeen adverted to (y). In a mining lease, where particular mines only are demised, there will naturally be an express exception and reservation (z) to the lessor of all other mines and minerals within or under the land containing the demised mines, with provision, in the manner noticed above, for the working, &c., of the excepted mines and minerals (a). And here again the importance of clear expression is obvious.

royalties.

The REDDENDUM (b) in a mining lease is generally made up of Rent and fixed and variable parts, the fixed part consisting of a certain annual rent, commonly termed a minimum or dead rent (c), and the variable part consisting of or comprising a royalty or royalties (d) dependent upon the amount of the produce gotten from the mines. In leases of coal-mines, the royalties, as well as the dead rent, are usually expressed and made payable in money; but in some cases, and particularly in leases of metalliferous mines (e), royalties are reserved which are deliverable in kind.

Some of the variable payments reserved by mining leases Different

kinds of royalties.

and also, as to inspection, infra, p. 206.

(y) Supra, pp. 141—145. (z) See note (x), p. 202.

(a) Note, however, that power to win and work minerals does not generally confer the right of so working as to let down the surface. See Proud v. Bates (1865), 34 L. J. Ch. at p. 460, and supra, pp. 144, 200. See, too. Bishop Auckland Industrial, &r., Society v. Butterworth Colliery ('o. (1904), 90 L. T. 149; W. N. 32, 151, where surface owners were held entitled to an injunction restraining mining lessees from injuring the surface by mining operations; and the recent Scottish case of Shawerigg Firecluy Co. v. Larkhall Collieries (1904), 5 F. 1131, where the proprietor of lands containing fireclay and coal first granted a lease of the fireclay without reserving the right of working the cual, and afterwards granted a lease of the coal; and it was held that the

lessees of the fireclay were entitled to interdict the lessees of the coal from working the coal so as to interfere with the working of the fireclay.

(b) On the subject of the reddendum generally, see supra, p. 150.

(c) Compare Settled Land Act, 1882, s. 9 (1) (ii), supra, p. 194. In the Forest of Dean "galeage" is paid, being "the ground rent paid for the privilege of a gale": English

Dialect Dictionary. (d) The word "royalties" is, in its primary sense, merely the English translation and equivalent of regulitates or jura regalia; but in mining leases (whether granted by the Crown or by a subject) it signifies the variable part of the reddendum, which depends on amount of minerals gotten: Att.-Gen. of Ontario v. Mercer (1883), 8 App. Cas. 767, at p. 777. See, too, Reg. v. Westbrook (1817), 10 Q. B. at p. 203.

(e) Bainbridge on Mines, 5th ed. 276.

which, in virtue of their variability, come within the category of royalties, may also be (f), and often are, called rents (g). Thus there may be reserved—

- (i) A tonnage royalty, i.e., a payment at the rate of so much a ton, varying with the weight of the minerals gotten in any one year of the lease;
- (ii) An acreage rent, i.e., a payment at the rate of so much an acre, varying with the area of the minerals so gotten;
- (iii) A footage rent, i.e., a payment at the rate of so much a cubic foot, varying with the thickness of the minerals so gotten (h);
- (iv) A proportionate part of the minerals so gotten, to be rendered in kind;
- (v) A payment varying with the quantity of the minerals sold in each year by the lessee;
- (vi) A rent rising and falling with the price of the minerals gotten, according to a sliding scale;
- (vii) A surface rent, varying with the amount of surface land occupied from time to time by the lessee in connection with his mining operations;
- (viii) A wayleave rent, varying with the amount of minerals conveyed by the lessee over other lands of the lessor not comprised in the lease, or brought from mines not comprised in the lease through the mines comprised in it (i); and
- (ix) A spoilbank rent, varying with the area of the lessor's land used from time to time by the lessee for depositing waste or rubbish, or with the quantity of stuff deposited.

Generally, where a dead rent and also a royalty or royalties are reserved, the lessor intends to secure to himself in any event the receipt of the quantum of benefit represented by the dead rent (j); and to that end an absolute covenant by the lessee to pay it is made part of the lease. In such a case, the dead rent

will be payable throughout the term, even though the mine

(f) That a so-called royalty may really be a rent properly so called, see per Martin, B., in Edmonds v. Eastwood (1858), 2 H. & N. at p. 820.

(g) See MacSwinney on Mines, 2nd ed. 234; Hood & Challis, Conveyancing, &c., Acts, 6th ed. 207; and with the variable payments mentioned in the text compare the variations authorized by the Settled Land

Act, 1890, supra, p. 194.

(h) Cf. Daniel v. Gracie (1844), 6 Q. B. 145, where there was a reservation of a rent of 8d. for every cubic yard of marl and slack gotten out of a demised marl-pit.

(i) E.y., Great Western Ry. Co. v. Rous (1870), L. R. 4 H. L. 650.

(j) See, too, Jegon v Vivian (1865), L. R. 1 C. P. at p. 34.

Payment of dead rent.

demised should either originally (k), or in consequence of accident (l), not be worth the cost of working. And, in the absence of provision to the contrary in the lease, a dead rent will continue to be payable even after all the minerals have been worked out by the lessee (m). Where, however, the lease fixes a minimum amount of minerals to be raised, and does not specify a minimum rent, the lessee is not bound to pay royalty on the minimum amount if it does not exist in the land (n).

"The object," it has been said (o), "of a fixed or minimum Twofold rent is twofold: first, to provide a specified income on which the tenant for life [sc. where the mine leased is part of a settled estate] can rely; and secondly (and this is the more important reason) as a security that the mine will be worked, and worked with reasonable rapidity."

object of dead rent.

A common provision, where dead rent and royalty are reserved, "Average" is what is called an "average" or "shorts" clause. It appears in mining leases under a great variety of forms (p), but is generally to the effect that if, in any year of the term, the

(k) Haywood \forall . Cope (1858), 25 Beav. 140; Ridgway v. Sneyd (1854), Kay, 627, 635; Jefferys v. Fairs (1876), 4 Ch. D. 448, 452; Strelley v. Pearson (1880), 15 Ch. D. at p. 119. Cf. Gowan v. Christie (1873), L. R. 2 H. L. Sc. 273.

(1) Phillips v. Jones (1839), 9 Sim. 519; Mellers v. Duke of Devonshire (1852), 16 Beav. 252. In both of these cases the lessee had covenanted to pay "whether the coal should be got or not"; but in Ridgway v. Sneyd, supra, Wood, V.-C., said (at p. 636) that a rent of a certain sum every year for the coal demised was equivalent to a rent whether the coal should be worked or not.

(m) R. v. Bedworth (1807), 8 East, at p. 388; Marquis of Bute v. Thompson (1844), 13 M. & W. 487, 493; Milne v. Taylor (1850), 16 L. T. O. S. 172; Jervis v. Tomkinson (1856), 1 H. & N. 195.

(n) Clifford v. Watts (1870), L. R. 5 C. P. at pp. 577, 588. For the construction of special covenants relating to rents or royalties payable for coal, see Edwards v. Rees (1836), 7 C. & P. 340; Clifton v. Walmesley

(1794), 5 T. R 564; Gerrard v. Clifton (1798), 7 T. R. 676 (royalty on coal sold "at the pit's mouth"); Great Western Ry. Co. v. Rous (1870), L. R. 4 H. L. 650 (wayleave rent in respect of coal, &c., brought "through, over, or under" the demised premises); and the old case of Smith v. Morris (1788), 2 Bro. C. C. 311, 314, where a lessee was relieved against further performance of a covenant to work on equitable terms, including payment of the value of all the coal remaining ungotten.

(o) By Stirling, L.J., in Re Aldam's S. E., [1902] 2 Ch. at p. 60.

(p) See, e.g., Clayton v. Penson (1878), W. N. 158, where there was a dead rent, and a recouping clause in case the lessee should have "actually worked and brought up" any saleable coal before a specified date; and Bishop v. Goodwin (1845), 13 M. & W. 260, where the decision turned on the construction of a very peculiarly worded covenant. simple form is given in Key & Elphinstone's Precedents, 7th ed. Vol. I. 812.

lessee does not get out of the demised mines a quantity of minerals sufficient to produce, at the stipulated rate, an amount of royalty equal to the dead rent, then the lessee may, in the next succeeding year or some other specified part of the term, get and raise enough minerals to make up the former insufficiency, without payment of any royalty in respect of such subsequently gotten minerals. It is to the interest of the lessee to have such a clause in his lease, although it does not in any way affect his liability to pay the dead rent.

"Usual" provisions in mining leases.

Besides the clause which has just been mentioned, there are a great many provisions, some of them peculiar to particular districts, which, in various forms, are commonly found in mining leases, but among all those provisions there is, it is conceived, not more than one which can properly be regarded as an accepted addition to the short list of provisions which are "usual" in leases (q), in the sense that they are so incidental to the relationship of landlord and tenant as to be impliedly part of every contract for a lease. The single addition referred to is a provision giving to the lessor of a mine a right of entry to inspect it for the twofold purpose of seeing (i) in what manner it is being worked, and (ii) the quantity of minerals obtained from it. Such a provision has been judicially said to be so necessary for the protection of the lessor of a mine that the contract between him and his lessee will, without any express stipulation, carry the provision in question in its bosom (in gremio) (r).

Necessary and usual powers.

In a case (s) in which, under a settlement, the tenant for life had power to lease coal-mines with all such powers as should be necessary or usually contained in leases of mines in the neighbourhood of the settled mines, a mining lease was held to be good which empowered the lessee to build miners' cottages in places convenient in reference to the works, it having been found by the jury that such a power was necessary and usual in leases of collieries in that neighbourhood.

Provisions which are not "usual"

Negatively, it has been decided that, under an agreement for a mining lease to contain all usual mining clauses or provisions,

(q) See supra, pp. 154 et seq.
(r) Blakesley v. Whieldon (1841), 1
Hare, 176, 181. This is, however, in substance merely a variant of the "usual" provision, entitling a lessor of buildings to enter and view the state of repair, which has been mentioned supra, p. 155. As to a

lessor's right, where the access to the demised mine is by a shaft going down through his land, to go down and inspect the mine, see Lewis v. Marsh (1849), 8 Hare, at p. 99.

(s) Morris v. Rhydydefed Colliery Co. (1838), 3 H. & N. 473, 885.

the lessor, on the one hand, is not entitled to require the insertion in the lease of clauses (i) for forfeiture of the lease in the event of the lessee becoming bankrupt or compounding with his creditors for less than twenty shillings in the pound, or (ii) in restraint of assignment (t), or (iii) for re-entry on breach of any of the covenants by the lessee other than the covenant for payment of rent (u); and, on the other hand, the lessee is not entitled to require a clause to be inserted to the purport or effect that, if the mine is not capable of being worked at a profit, the lessee shall be entitled to determine the lease (x).

But, if the agreement provides that the lease shall contain all customary mining clauses, there is authority for saying that the insertion in the lease of many special provisions, such as provisions with respect to the manner and time of working and protection against the influx of water, may be insisted upon by the lessor, as being customarily contained in mining leases (y).

It would be going beyond the scope of this treatise to attempt anything like a detailed enumeration or review of all the covenants which find place, more or less commonly, in mining leases; but there is one class or group of them which is of such universality and importance that it cannot be passed by without notice, and that is the class or group of lessee's covenants with respect to the working of the demised minerals. Speaking generally, the extent of a lessee's obligation as to working depends upon, and is to be measured by, the language of the covenants into which he has entered in his lease. The mere fact that he has accepted a lease of a mine at a rent, and subject to payment of royalty on minerals gotten from it, will not without more oblige him to work a shaft down to the minerals (z), or to work them (a). And where he does covenant to sink a shaft, or to work the demised mine, his covenants may be either absolute or qualified. times the lessee of a mine covenants to work it continuously (b); and

"Customary" clauses.

⁽t) Hodykinson v. Crowe (1875), L. R. 19 Eq. 591.

⁽u) S. C. in C. A. 1875, 10 Ch. 622. (x) Strelley v. Pearson (1880), 15

Ch. D. 113, at p. 119.

(y) Per Bacon, V.-C., in Hodgkinson
v. Crowe, supra, L. R. 19 Eq. at
p. 594. The custom of the district
in which the mine is situate will, it
is conceived, be had regard to in such
cases

⁽z) Wheatley v. Westminster Brymbo Coal Co. (1869), L. R. 9 Eq. 538. See, too, Jegon v. Vivian (1871), L. R. 6 Ch. at pp. 754—756; Lewis v. Fothergill (1869), L. R. 5 Ch. at p. 106.

⁽a) Lord Abinger v. Ashton (1873), L. R. 17 Eq. 358, 370.

⁽b) E.g., Jervis v. Tomkinson (1856), 1 H. & N. 195.

if he enters into such a covenant without any qualification (c), he cannot complain if he finds himself obliged to go on working even at a loss. Even without an express covenant on the lessee's part to work continuously, the lessor may indirectly compel him to do so by taking so heavy a dead rent as to make the lessee find it to his own benefit to be always working, or by stipulating that so much coal shall be raised by the lessee in every year of the term (d).

Mode of working.

If the lease contemplates and provides that the demised mine shall be worked, but makes no express provision as to the mode of working, the lessee must conform to any usual and approved mode of working which may be existing in the district (e).

Instances of covenants to work which have been judicially construed.

The following are instances of lessees' covenants to work (f), and of the way in which such covenants have been construed by the Courts:—

COVENANT to raise not less than two acres of coal annually, or pay rent for that amount, whether the same should be got or not, with a proviso for cesser of the term if all the coal is exhausted. This is an absolute covenant, and the lessee must pay the rent, notwithstanding deficiency in the amount obtainable, or difficulty in working, until the coal is utterly exhausted (g).

COVENANT to work coal-mine as long as it is fairly workable. The lessee is not bound to work the mine at a dead loss (h). "Fairly workable" means that which can be fairly and properly got according to mining usage without extraordinary difficulty or expense (i).

COVENANT, in lease of brickfield, to get the demised clay to the fullest practicable extent consistent with the means of sale of bricks and tiles to be made therefrom. This does not bind the lessee to go on working at a loss, even though

(c) See Hanson v. Boothman (1810), 13 East, 22.

(d) Per Lord Hatherley in Jegon v. Vivian (1871), L. R. 6 Ch. at p. 757.

(e) Eadon v. Jeffcock (1372), L. R. 7 Ex. 379, at pp. 389, 393.

(f) As to demand done in

(f) As to damage done in working mines, see supra, pp. 144, 200.

(g) Mellers v. Duke of Devonshire (1852), 16 Beav. 252. Cf. Lord Clifford v. Watts (1870), L. R. 5 C. P.

577; supra, p. 205.

(h) Jones v. Shears (1836), 7 C. & P. 346. See Phillips v. Jones

(1839), 9 Sim. 519.

(i) See definition of "fairly wrought" by Pollock, C.B., in Griffiths v. Rigby (1856), 1 H. & N. 237, at p. 241, which definition was. however, questioned in Cartwright v. Forman (1866), 7 B. & S. p. 247.

a means of sale (at an un-remunerative rate) might have been found for bricks made out of the demised clay (k).

- COVENANT to sink for coal as far as could and ought to be accomplished by persons acquainted with the nature of collieries. It is sufficient if it is found on competent trial to be impossible to get any coal fit to be worked (l).
- COVENANT to work mines in a proper and workmanlike manner (m). Working by instroke from an adjacent mine is permissible, and the lessee is not bound to sink a separate pit for the demised coal (n).
- Covenant, in indenture demising all mines which had been or during the demise should be opened, to work the mines in a proper and workmanlike manner. The lessee is not liable under this covenant, if the mines have not been worked at all (o). But, under a covenant to work a mine of rock salt in such a manner, it was held that the lessees must work, although by an accident prior to the lease the working was unduly difficult or expensive (p).
- COVENANT to work and carry on the mines with the utmost care and ability, and in the best and most effectual manner, according to the common mode and usual practice of carrying on collieries with effect. The lessees are not bound to work all the demised seams at once, but may work a lower seam before a higher, if such is the common practice in the district (q).
- COVENANT, in a lease reserving a minimum rent, to work coalmines uninterruptedly, efficiently, regularly, and according to the usual or most improved practice. There is no obligation on the lessees to sink pits, although that may be the most efficient mode of working (r). It was also held, in the last cited case (r), that, so long as the minimum rent was paid, the lessees were not bound to work the mine at
- (k) Newton v. Nock (1880), 43 L. T. 197.
- (l) Hanson v. Boothman (1810), 13 East, 22.
- (m) For an instance of a special covenant relating to keeping the mine free from water and in repair and ventilated, see James v. Cochrane (1853), 8 Ex. 556.
- (n) Jeyon v. Vivian (1871), L. R. 6 Ch. 742; Lewis v. Fothergill (1869), L. R. 5 Ch. 103. In the first-mentioned case the lessees of the demised mine had another colliery to the rise
- of it, and it was held that they were not bound to keep up a barrier, so as to prevent water and air from flowing into the demised mine from the other colliery, and were not liable to pay for way-leave or for air-leave.
- (o) Quarrington v. Arthur (1842), 10 M. & W. 335.
- (p) Jervis v. Tomkinson (1856), 1 H. & N. 195.
- (q) Lord Abinger v. Ashton (1873), L. R. 17 Eq. 358.
- (r) Wheatley v. Westminster Brymbo Coal Co. (1869), L. R. 9 Eq. 538.

all. It is conceived, however, that that view was erroneous, and that, in such a case, a lessee, by not working at all, commits a breach of the covenant to work efficiently, although he pays the minimum rent (s). It has been held to be a breach of a similar covenant, in a lease of china clay, if for some months no fresh clay is got, and only the old stock worked (t).

COVENANT, in a lease of beds of stone, at all times during the term to work the pits, mines, &c., in a workmanlike manner, and to leave pillars of the stone of sufficient strength to support the roofs of the mines. The covenant, being general in its terms, is to be construed generally; and the lessees are liable for surface damage by subsidence owing to the insufficiency of the pillars left to support the roofs, notwithstanding that they have worked in a usual and workmanlike manner (u).

COVENANT, in a lease of ironstone mines with ironworks and furnaces, to work the furnaces effectually, unless prevented by inevitable accident (x) or want of materials, or unless the ironstone should be insufficient in quantity or quality, or would not by itself, or with a proper mixture and process, make good common pig-iron. It is not necessary that the ingredients for the mixture should be procurable on the demised premises (y).

In a case in which, by an agreement to grant a lease of coal for twenty-one years, the only rent reserved was dependent on the quantity of coal raised, and was made payable quarterly, it was held that the lessee was bound to commence working immediately, and to proceed continuously (z).

Specific performance and injunction in relation to working.

Specific performance of an agreement to work collieries in a particular manner will not be enforced (a); and an injunction to restrain the working of collieries will be granted with great reluctance, and only where there is a breach of an express covenant or uncontroverted mischief (b).

- (s) See per Jessel, M.R., in Kinsman v. Jackson (1880), 42 L. T. 80, 558; and MacSwinney on Mines, 2nd ed. 243, note 1.
- (t) Kinsman v. Jackson, supra. (u) Hodgson v. Moulson (1865), 18 C. B. N. S. 332.
- (x) As to unavoidable accident, see Morris v. Smith (1783), 3 Doug. 279.
- (y) Foley v. Addenbrooke (1844), 13 M. & W. 174.
- (z) Sharp v. Wright (1859), 28 Beav. 150.
- (a) Booth v. Pollard (1840), 4 Y. & C. Ex. 61. Cf. Flint v. Brandon (1803), 8 Ves. 159. See, too. Fry on Spec. Perf., 4th ed. p. 42.

(b) Anon. (1754), Ambl. 209.

Mining leases are expressly excepted from the sixth section of Distress on an the Bills of Sale Act, 1878 (c), which enacts that powers of distress, mine. if conferred by way of security for a debt or advance, are to be deemed bills of sale. Accordingly, where it is intended that two mines held by the same lessees under different lessors shall be worked together, a power may validly be reserved by each or either of the lessors, in the lease granted by him, to distrain upon chattels belonging to the lessees, not only in the mine demised by him, but also in the other mine, and the lease reserving such a power does not require registration under the Bills of Sale Acts (d).

In considering the rights and liabilities of lessees with respect Waste in to the working of mines and quarries, regard must be had to the mines. law of waste (e); and the following points in particular require attention.

> does not mention

Generally, under a lease of land by an owner in fee not men- 1. Where lease tioning mines, the lessee (f) may work and take the profits of mines which are open at the time of making the lease (g), provided mines. the reversioner has already commenced working them with a view to profit (h); and in this respect there is no difference between mines and quarries (h). But digging for stone or slate for the purpose of building or repairing houses on the property is not an opening of the quarry for the purpose of profit within the meaning of this rule (i). When the mine or quarry is once open in this sense, the sinking of a new pit in the same vein, or breaking ground in a new place on the same rock, is not necessarily the opening of a new mine or quarry (k).

Where, however, no mines or quarries are open at the time of the demise, it is, in the absence of express power conferred by

(c) 41 & 42 Vict. c. 31.

(d) Re Roundwood Colliery Co., [1897] 1 Ch. 373. As to the reason for this exception of mining leases, see S. C. at pp. 385, 391. Such a power of distress as is mentioned in the text, though not technically "usual" (supra, p. 206), is by no means uncommon: S. C. at pp. 390, 396, 399.

(e) On the subject of waste generally, see infra, Chap. IV., Sect. 3.

(f) As to a lessee's right to fell trees for the purpose of working mines or quarries, see Lord Darcy v. Askwith (1618), Hob. 234; Doe v.

Price (1849), 8 C. B. 894.

(g) Co. Litt. 54 b; Saunders' Case (1598), 5 Rep. 12 a; Astry v. Ballard (1678), 2 Mod. 193; judgment_in Clegy v. Rowland (1866), L. R. 2 Eq. at p. 165.

(h) Elias v. Griffith (1878), 8 Ch. D. 521; on appeal, sub nom. Elias v. Snowdon Slate Quarries Co. (1879), 4 App. Cas. 454.

(i) Elias v. Griffith, 8 Ch. D.

p. 532.

(k) Elias v. Snowdon Slate Quarries Co. (1879), 4 App. Cas. at p. 466 (per Lord Selborne).

the lease, waste for the lessee to dig for gravel, clay, stone, or the like, or for metals or coal (l): though, if the lease is without impeachment of waste, while he cannot, as by digging clay for bricks, destroy the land, he may, it is conceived, open new mines (m).

2. Where lease includes mines.

If the lease includes mines, and there is one mine open, the lessee can only work that mine (n); but if all the mines are unopened, he may open and work any of them (o).

Quiet enjoyment.

Where, in the lease of a coal-mine, there is a general covenant for quiet enjoyment, the working of ironstone lying between the surface and the demised coal, in such a manner as to interfere with the lessee in his occupation of the mine, will constitute a breach (p).

Statutory restrictions on and relief against forfeiture. In the case of a mining lease, the provisions of sect. 14(q) of the Conveyancing, &c., Act, 1881, relating to restrictions on and relief against the forfeiture of leases, do not apply to a covenant or condition for allowing the lessor to have access to or to inspect books, accounts, records, weighing machines, or other things, or to enter or inspect the mine or the workings thereof (r). And leases of mines or minerals are expressly excepted from a modification, in favour of creditors, of sub-sect. (6) (i) of the above sect. (6) (i) of the above sect. (6)

Stamps on mining leases.

The Stamp Act, 1891, makes no special provision (t) for the duty to be paid on mining leases containing reservations of footage or acreage rents (u), or royalties, varying with the amount of minerals won. Sums of money so reserved are, however, in the nature of rent, not of purchase-money (x). In respect of the varying rent a stamp duty of 10s. is payable, and, in addition, ad valorem duty is payable on any minimum or dead rent that may be reserved (y).

(l) Co. Litt. 53 b, 54 b; Saunders' Case (1598), 5 Rep. 12 a; Lord Darcy v. Askwith (1618), Hob. 234.

(m) Bishop of London v. Web (1718), 1 P. Wms. 527; MacSwinney on Mines, 2nd ed. p. 68, note 1.

(n) Co. Litt. 54 b; Clegg v. Rowland (1866), L. R. 2 Eq. at p. 165.

(o) Co. Litt. 54 b; Saunders' Case, supra.

(p) Shaw v. Stenton (1858), 2 H. & N. 858. See further on this point infra, Chap. IV., Sect. 10. (q) As to this section generally, see infra, Chap. VI., Sect. 2 (3) (iv).

(r) Conv. Act, 1881, s. 14 (6) (ii). (s) Conv. Act, 1892, ss. 2 (2), (3)(b). As to this section, see further infra, Chap. VI., Sect. 2 (3) (iv).

(t) As to stamps on leases generally, see supra, pp. 175 et seq.

(u) As to these, see supra, p. 204. (x) Barrs v. Lea (1862), 33 L. J. Ch. 437.

(y) See Alpe on Stamp Duties, 9th ed. pp. 144, 146.

(2) MINING LICENCES.

Instruments are sometimes inaccurately called mining leases Mining which are really mining licences (z), and vice versû. But though licences distinguished a mining licence not uncommonly presents, in form, a good many from leases. points of resemblance to a mining lease, they are substantially distinct and different things. One striking difference is that a mining licence confers no estate in land (a). It commonly takes the form (b) of a grant by the licensor to the licensee of liberty to dig or otherwise search for and get minerals within a specified area of land, and to carry them away and dispose of them for the licensee's benefit, together with such incidental liberties or powers of erecting machinery, for instance, or diverting watercourses, as may be appropriate to the case, during a specified term of years, subject to annual or other payments by way of rent or royalty, and to the performance of covenants as to working and other covenants on the part of the licensee, and with a proviso for re-entry or determination of the licence on non-payment of rent or royalty, or breach of covenant by the licensee. Such a licence is, indeed, what a something more than a mere personal licence (c). It is a profit à mining licence is. prendre, an incorporeal hereditament lying in grant (d), and capable of being assigned (e); it is, "on account of its carrying an interest," irrevocable (f); and it may, in certain cases, enable the licensee to maintain an action for conversion against a wrongdoer (g). But the licensee, under such a licence, differs materially from a lessee, in that he has no estate or property in the land itself or any particular part of it, or in any minerals within the land which for the time being remain ungotten; and, as regards the minerals which he actually gets under the licence, he is entitled to them, when gotten, as personal chattels only (h).

- (z) The instrument sued on in Wright v. Pitt (1870), L. R. 12 Eq. 408, is called in the headnote "a lease or licence to mine," but appears from the description of it to have been more in the nature of a licence than of a lease.
- (a) Chetham v. Williamson (1804), 4 East, 409; Doe v. Wood (1819), 2 B. & Al. 724, 739.
- (b) See, e.g., Doe v. Wood, supra; Martyn v. Williams (1857), 1 H. & N. 817; Ward v. Day (1863), 4 B. & S. 337; Norval v. Pascoe (1864), 34 L. J. Ch. 82. Forms of mining licences are given in the appendix to Bainbridge on Mines, as well as in

Key & Elphinstone and other collections of precedents.

(c) As to licences generally, see

supra, pp. 85 et seq.

(d) Duke of Sutherland v. Heathcote, [1892] 1 Ch. at pp. 483, 484. Cf. Wickham ∇ . Hawker (1840), 7 M. & W. p. 78; and Hooper v. Clark (1867), L. R. 2 Q. B. 200.

(e) Muskett v. Hill (1839), 5 Bing.

N. C. 694.

(f) Doe v. Wood (1819), 2 B. & Al. at p. 738.

(g) Northam v. Bowden (1855), 11

Exch. 70.

(h) Doe v. Wood (1819), 2 B. & Al. at p. 739. A licence to work mines Rent and distress.

Covenants.

Again, payments by way of rent, reserved in a mining licence, are not rent properly so called (i); and there is, therefore, no right of distress in respect of them, unless an express power of distraining is, as it may be, reserved to the grantor by the deed (k).

With respect, however, to some covenants not uncommonly inserted in mining licences, such, for example, as a covenant by the licensee to pay compensation for damage done to surface land, or to deliver up works at the end of the term in good repair, there is a similarity between licences and leases, in that such covenants (i) will run (l) with the estate of the owner of the freehold expectant on the determination of the term of the licence, so as to be enforceable by an alience of that estate (m), and (ii) will run with the land affected by the licence, so as to bind assignees of the original licensee (n).

Re-entry.

A proviso for re-entry is not less appropriate or applicable to a mining licence than to a mining lease; for, under such a licence, works may be constructed, and a corporeal possession had, which it may, in certain events, be expedient and possible for the grantor to enter upon and to resume (o). But where the proviso gives the grantor power to determine the licence and re-enter in the event of the licensee's failure to work in accordance with the licence after notice to him to do so, the giving of a proper notice is, of course, a necessary preliminary to re-entry (p); and where there was a provision that, upon the licensee neglecting to work, the licence should become void, it was held (q) that, by analogy to similar provisions in leases, "void" must be construed to mean "voidable," so that, notwithstanding the licensee's neglect to work, there would be no determination of the licence unless or until the grantor gave notice of his intention to determine it.

Provisions of Conv. Act, 1881, s. 14.

Further, it is to be borne in mind that the provisions of sect. 14 (r) of the Conveyancing, &c., Act, 1881, relative to re-entry

can only be granted by deed: Co. Litt. 9 a. (7. supra, p. 126.

(i) See infra, pp. 218—220.

(k) Ward v. Day (1863), 4 B. & S.

at p. 358.

(1) As to covenants running with land and with the reversion, see infra, Chap. V., Sect. 1 (4) (5).

(m) Martyn v. Williams (1857), 1 H. & N. 817, 830. Cf. Hooper v. Clark (1867), L. R. 2 Q. B. at p. 203.

(n) Norval v. Pascoe (1864), 34 L. J. Ch. 82.

(o) Doe v. Wood (1819), 2 B. & AL at p. 740.

(p) Muskett v. Hill (1839), 5 Bing. N. C. 694, 711.

(q) Roberts v. Davey (1833), 4 B. & Ad. 664; 2 L. J. K. B. 141; 1 N. & M. 443.

(r) As to this section, see infra, Chap. VI., Sect. 2 (3) (iv).

and relief against forfeiture, apply to mining licences; for, in that Act, a mining lease includes a grant or licence for mining purposes, "that is, the searching for, winning, working, getting, making merchantable, carrying away, or disposing of mines and minerals, or purposes connected therewith." (s).

A mining licence may be either exclusive or non-exclusive (t). Exclusive "A profit à prendre is a right to take something off another exclusive person's land. Such a right does not prevent the owner from licences. taking the same sort of thing from off his own land; the first right may limit, but does not exclude the second. An exclusive right to all the profit of a particular kind can, no doubt, be granted; but such a right cannot be inferred from language which is not clear and explicit" (u). In other words, where a mining licence does not in terms confer an exclusive right upon the licensee, it is a non-exclusive licence; that is to say, its existence will not prevent the licensor from granting other similar licences in relation to the same lands, provided always that they are not so granted as to defeat the known objects of the first licensee in applying for his licence (x). For, of course, a licence, though non-exclusive, must have a reasonable intent; the licensee must be content with acquiring in the usual way what he can, but he is not to have the whole swept away from him in a body by the licensor, or by a second licensee (y). Indeed, if a licensee, after having, in pursuance of his licence, actually opened and worked a mine, and while in actual possession of it, were to be ousted, he would probably be entitled to maintain an action for recovery of possession (z).

(s) Conv. Act, 1881, s. 2 (11).

(t) As to a non-exclusive "exploring" licence, see per Jessel, M.R., in Re Haven Gold Mining Co. (1882), 20 Ch. D. at p. 160.

(u) Per Lindley, L.J., in Duke of Sutherland v. Heathcote, [1892] 1 Ch. at pp. 484, 485. See, too, Chetham v. Williamson (1804), 4 East, 469; Doc v. Wood (1819), 2 B. & Al. 724.

(x) Carr v. Benson (1868), L. R. 3 Ch. at p. 532. Lord Mountjoy's Case (otherwise Earl of Huntingdon v. Lord Mountjoy) (1582), 1 And. 307; 4 Leon. 147, is a leading authority for the proposition that a grant in fee of liberty to dig ores does not confer on the grantee an exclusive right to dig them, even if the grant is in terms without any interuption by the grantor: per Lindley, L.J., in the Duke of Sutherland's Case, supra, at p. 485.

(y) Carr v. Benson (1868), L. R. 3 Ch. at p. 534. In his judgment in that case Page-Wood, L.J., says (at p. 532) that a licensee "where he is under no obligation to work" cannot exclude his licensor from granting other licences. It is conceived that, unless the first licence is clearly an exclusive one, the licensor can grant further licences to the extent indicated in the text, irrespectively of whether the first licensee has, or has not, covenanted to work.

(z) Doe v. Wood (1819), 2 B. & Al. at p. 737. Cf. Roads v. Overseers of Stamp duties.

A personal licence to enter upon land may be given either by parol or under seal; in the former case it is not chargeable with any stamp duty; in the latter the duty is 10s. But a licence to enter upon land and to take minerals out of and away from it is a grant of an interest in property, and is chargeable with ad valorem duty upon the amount paid therefor (a).

Trumpington (1870), L. R. 6 Q. B. at p. 105. Cf. Bainbridge on Mines, 5th ed. p. 357.

(a) Alpe on Stamp Duties, 9th ed.

CHAPTER IV.

TERMS OF TENANCY (a).

		PAGE
SECT. I.	Rent	. 217
	(1) What may be reserved as rent	. 217
	(2) Payments which are not rent	. 218
	(3) When rent is payable	. 220
	(4) Where payable	. 223
	(5) To whom payable	. 223
	(6) Amount payable	. 227
	Increased rent	. 227
	Deductions from rent	. 229
	Premises destroyed by fire, &c	. 235
	Eviction	. 236
	(7) Apportionment	. 238
	In respect of estate	. 238
	In respect of time	. 240
	(8) Payment	. 242
	(9) Effect of payment	. 243
	(10) Remedies for recovery of rent (a)	. 244
SECT. II.	REPAIRS	. 332
SECT. III.	WASTE	. 348
SECT. IV.	Mode of using Premises	. 353
SECT. V.	CULTIVATION OF LAND	. 367
SECT. VI.	Fences	. 375
SECT. VII.	Trees	. 377
SECT. VIII.	Insurance	. 380
SECT. IX.	Taxes	. 382
SECT. X.	Quiet Enjoyment	. 397
SECT. XI.	Live Stock	. 405
SECT. XII.	GAME	406
SECT. XIII.	Underleases	. 412

SECT. I.—RENT.

(1) WHAT MAY BE RESERVED AS RENT.

Ir is not essential that rent should consist of the payment of Need not be The delivery of hens, horses, wheat (b), &c., may constitute a rent (c), and so also may the performance of personal services, such as shearing sheep (d), carrying coals (e), or cleaning a church (f). The reservation in a lease of land of a

money.

(a) For full tables of contents, see under the respective headings.

(b) As to the construction of corn rents, see St. Cross v. De Walden (1795), 6 T. R. 338, 343.

(c) Co. Litt. 142 a. See Pitcher v. Tovey (1692), 4 Mod. 71.

(d) Co. Litt. 96 a.

(e) Due v. Morse (1830), 1 B. & Ad. 365. See Lanyon v. Carne (1668), 2 Saund. 165, 167; D. of Marlborough v. Osborn (1864), 5 B. & S. 67.

(f) Doe v. Benham (1845), 7 Q. B. 976.

service or suit to a mill belonging to the lessor, by sending to be ground there all corn grown on the demised land, is a reservation in the nature of rent, where and so long as the property in the mill and the reversion of the demised land are and continue to be in the same person (g).

Must not be part of demised premises. Parcel of the annual profits of the premises demised, as, for instance, the herbage of land, cannot be reserved as rent (h). A royalty payable to the owner of a brickfield upon the bricks made is, however, a rent, although paid for land which is in course of being wholly consumed (i).

(2) PAYMENTS WHICH ARE NOT RENT.

The following payments are not, properly speaking, rent, and, though recoverable by action, cannot be distrained for, unless an express power to distrain is contained in the lease:

1. Sums reserved on leases of incorporeal hereditaments.

Payments reserved by way of rent on a lease of an incorporeal hereditament (k), such as an advowson or tithes (l), or a franchise or liberty, e.g. a fair or market (m). But a single rent reserved upon a lease by deed (n) of land and tithes is good, since the rent, although payable for the land and tithes, is held to issue out of the land alone (o). But rent may be reserved out of reversions and remainders (p), and the sovereign may reserve a rent out of any incorporeal hereditament (p).

2. Sums reserved on leases of chattels.

Payments reserved by way of rent on a lease of personal chattels (q). But a mixed payment of rent for land and goods will be held to issue out of the land alone (r); hence rent for furnished lodgings (s), or for the exclusive occupation of part of a

(g) Vyvyan v. Arthur (1823), 1 B. & C. 410, 414, 415.

(h) Co. Litt. 142 a; 2 Black. Com. 41.

(i) Reg. v. Westbrook (1847), 10 Q. B. 178, 203; Reg. v. Everist, ib. See Daniel v. Gracie (1844), 6 Q. B. 145; Barrs v. Lea (1864), 33 L. J. Ch. 437. As to royalties in mining leases, see supra, p. 203.

(k) Co. Litt. 47 a; Gardiner v. Williamson (1831), 2 B. & Ad. 336; Buszard v. Capel (1828), 8 B. & C. 141, per Lord Tenterden, C.J., at p. 150; on appeal, 6 Bing. 150. As to sums made payable upon a grant of a way-leave to a railway company in respect of traffic passing over the line, see N. E. Ry. Co. v. Lord Hastings,

[1900] A. C. 260.

(1) See Dean of Windsor v. Gover (1671), 2 Saund. 302. But as to lease of advowson, see supra, p. 2.

(m) Jewel's Case (1587), 5 Rep. 3 a.

(n) See Gardiner v. Williamson, supra.

(o) Smith v. Bowles (1618), 2 Roll. Abr. 451.

(p) Co. Litt. 47 a; see note 284. (q) Spencer's Case (1583), 5 Rep. at

p. 17 a.

(r) Collins v. Harding (1598), Cro.

(r) Collins v. Harding (1598), Cro. Eliz. at p. 607; Farewell v. Dickenson (1827), 6 B. & C. 251.

(s) Newman v. Anderton (1806), 2 B. & P. N. R. 224. room (t), or part of a mill (u), together with a supply of steam power and gas, may be distrained for. It seems, however, that if the house and goods pass to different persons, either the rent will be apportioned, or an agreement inferred to hold the house at a reasonable rent, and to pay compensation for the use of the furniture (x).

Payments reserved by way of rent on a mere licence to use 3. Sums premises for a particular purpose (y). A distress cannot be made mere licence. for rent reserved on a letting of a standing for machinery, with a supply of steam power (z), unless the letting is of a defined portion of a room in a factory, partitioned off from the rest, with the intention of giving the exclusive occupation to the person to whom it is let (a).

Payments reserved by way of rent on a mere agreement for a lease, where no tenancy has been created by payment of rent or otherwise (b), unless the tenant is in possession under an agree- ment for a ment which is capable of specific enforcement (c); but an undertaking to hold the land at a rent till the lease is granted will make the lessee liable for rent, although no lease is granted or possession taken (d).

4. Sums reserved on a mere agree-

Where a tenant holds over after notice to quit given by the landlord, rent subsequently accruing due cannot be distrained for until a new tenancy has been expressly or impliedly created (e).

Payments by way of increased rent which a tenant under a 5. Additional lease for a term of years agrees with his lessor to make during the remainder of the term, in consideration of the lessor's executing improvements on the demised premises (f). Though the word rent is used, the agreement is held to amount only to a personal contract to pay an additional sum yearly (g). Such an

rent for improvements.

```
(t) Selby v. Greaves (1868), L. R. 3
C. P. 594.
```

(u) Marshall v. Schofield & Co. (1882), 52 L. J. Q. B. 58.

(x) Salmon v. Matthews (1841), 8 M. & W. 827.

(y) See *supra*, p. 86.

(2) Huncock v. Austin (1863), 14 C. B. N. S. 634.

(a) Selby v. Greaves (1868), L. R. ³ C. P. 594.

(b) Hegan v. Johnson (1809), 2 Taunt. 148; Dunk v. Hunter (1822), 5 B. & Al. 322; Regnart v. Porter (1831), 7 Bing. 451. See supra,

p. 94.

(c) Walsh v. Lonsdale (1882), 21 Ch. D. 9. See supra, p. 81.

(d) Adams v. Hagger (1879), 4 Q. B. D. 480.

(e) Alford v. Vickery (1842), Car. & M. 280; Jenner v. Clegg (1832), 1

Moo. & R. 213; supra, p. 95. (f) Hoby v. Roebuck (1816), 7 Taunt. 157; Donellan v. Read (1832), 3 B. & Ad. 899; Lambert v. Norris (1837), 2 M. & W. 333. See Foquet

v. Moor (1852), 7 Ex. 870. (y) See judgment in Donellan v.

Read, 3 B. & Ad. at p. 905.

agreement does not relate to an interest in land within the Statute of Frauds, and consequently may be by parol (h).

6. Payments "over and above the rent."

Payments agreed to be made by the lessee to the lessor annually "over and above the rent" (i), unless they are included in the reservation (k).

7. Payments reserved upon the assignment of a lease.

Payments by way of rent reserved upon the assignment of a lease (l). In such a case there is no reversion in the assignor, and therefore there can be no distress for the rent. But, apart from the question of distress, the assignment operates as an underlease, and debt lies for the rent (m).

8. Payments reserved to a stranger.

Payments by way of rent reserved to a stranger to the reversion (n). But such a reservation may be good by estoppel (o); and it seems that the sovereign may reserve rent to a stranger (p).

(3) WHEN RENT IS PAYABLE.

Where there is no express stipulation as to days of payment.

A yearly rent is payable only once in a year, and not until the end of the year (q), unless the reservation be qualified by subsequent words, making the rent payable in advance (r), or at shorter intervals than a year, as, for instance, half-yearly or quarterly (s), or unless the agreement is so expressed as to show that the time of payment was left indefinite, when the contemporaneous or subsequent dealings of the parties may be given in evidence to show that the rent was to become payable at an earlier period (t). If a man makes a lease on a day intermediate between two quarter-days, as on the 1st of May, reserving rent payable half-yearly, this means half-yearly from the making of the lease (u).

(h) Donellan v. Read, supra.

(i) Smith v. Mapleback (1786), 1 T. R. 441, 445.

(k) Barrs v. Lea (1864), 33 L. J. Ch. 437.

(1) Witton v. Bye (1619), Cro. Jac. 486; Parmenter v. Webber (1818), 8 Taunt. 593; Anon. v. Cooper (1768), 2 Wils. 375. See, too, Langford v. Selmes (1857), 3 K. & J. 220.

(m) Poulteney v. Holmes (1721), 1 Stra. 405; Preece v. Corrie (1828), 5

Bing. 24.

(n) Co. Litt. 143 b; Oates v. Frith (1615), Hob. 130; 2 Roll. Abr. 447, pl. 3. See Gilbertson v. Richards (1859), 4 H. & N. 277.

(o) See supra, p. 74.

(p) Co. Litt. 143 b.

(q) Cole v. Sury (1627), Latch. 264; Coomber v. Howard (1845), 1 C. B. 440. See Turner v. Allday (1836). Tyr. & G. 819.

(r) See Finch v. Miller (1848), 5 C. B. 428; Hopkins v. Helmore (1838). 8 A. & E. 463; supra, p. 151.

(8) Coomber v. Howard, supra: Bishop v. Goodwin (1845), 14 M. & W. 260; R. v. Norwich Incorporation (1874), 30 L. T. 704; Doe v. Golding (1821), 6 Moo. 231; Tomkins v. Pinsent (1702), 2 Ld. Raym. 819. See Turner v. Allday, supra.

_(t) (fore v. Lloyd (1844), 12 M. &

W. 463.

(u) Gilbert, Rents, p. 50.

A clause making a lease determinable by notice expiring on any quarter-day will not constitute a quarterly reservation of rent (x).

Sometimes by the custom of the country rent may be due in advance (y).

The following are instances of the construction of express Construction stipulations with respect to the payment of rent:-

of express stipulations.

- RENT PAYABLE quarterly, or half-quarterly, if required. Where the landlord has received the rent quarterly for a year, a previous demand is necessary to make it payable halfquarterly (z). A distress in such a case is not equivalent to a demand, and cannot be made before a demand in fact (a).
- RENT PAYABLE quarterly on the usual quarter-days, and always, if required, in advance. A demand may be made at any moment, and, if not complied with, the lessor may forthwith distrain (b). But if the rent is yearly, and payable in advance, if required, the lessor cannot, after demanding only a quarter's rent, forthwith distrain for a year's rent (c).
- RENT PAYABLE at the "two usual feasts of the year." Is due at Michaelmas and Lady Day (d).
- RENT PAYABLE from the following Lady Day upon a parol demise. Where there is a custom of the country respecting the meaning of "Lady Day," that term is considered primâ facie as used consistently with the custom, and evidence of such custom is admissible (e).
- Rent payable on a specified day, or within a certain number of Is not due, during the continuance days afterwards. of the lease, until the expiration of the last of the days of grace (f). If, however, the lease expires at the specified day, the days of grace are disregarded, and the rent is
- (x) Collett ∇ . Curling (1847), 10 Q. B. 785.
- (y) Buckley ∇ . Taylor (1788), 2 T. R. 600. See Doe v. Weller (1837), 1 Jur. 622.
- (z) Mallam v. Arden (1833), 10 Bing. 299.
- (a) Per Alderson, J., 10 Bing. 300. See Chapman v. Chapman (1628), Cro. Car. 76.
 - (b) London and Westminster Loan

- Co. v. L. and N. W. Ry. Co., [1893] 2 Q. B. 49.
- (c) Clarke v. Holford (1848), 2 C. & K. 540.
 - (d) 2 Roll. Abr. 450 (M.), pl. 2.
- (e) Doe v. Benson (1821), 4 B. & Al. **588, 589.**
- (f) Clun's Case (1614), 10 Rep. 127 a, 128 a; Blunden's Case (1598), Cro. Eliz. 565; Pilkington v. Dalton (1598), Cro. Eliz. 575.

then due (g). The payment of rent by the lessee upon the day first specified or at any time during the further period will be a good payment.

RENT PAYABLE at the "feasts of the Annunciation and St. Michael," in a lease made in August. The words will be transposed, and the first instalment of the rent is payable at Michaelmas (h).

RENT PAYABLE quarterly, "the first payment to be made on the 25th of March following," in agreement dated 8th September. Only a quarter's rent is due on 25th March, the first quarter's rent being either forgiven altogether, or postponed to the end of the term (i).

RENT PAYABLE "yearly and every year during the term by four equal quarterly payments, on 25th March, 24th June, 29th September and 25th December in every year, commencing from 25th March then instant," in a lease for seven years wanting seven days from 25th March, by indenture dated 21st March. There must be seven payments of the annual rent; the rent will either be treated as a forehand rent, the first payment to be made on entering; or as payable on the days named, although one of them is after the expiration of the term (k).

Payment before the rent-day.

If a tenant pays his rent before the day on which it is due, the payment is voluntary, and at law does not operate as a discharge (l). Consequently it does not at law save a condition for re-entry on non-payment of rent on the day (m). Such a payment is not a fulfilment of the obligation imposed by a covenant to pay rent, but is in fact an advance to the landlord with an agreement that on the day when the rent becomes due such advance shall be treated as a fulfilment of the obligation to pay the rent (n). Hence a payment on account of rent not due at the time was formerly in equity, and is now generally, a defence as against the lessor and his heirs to an action for the rent (o); though, if the lessor dies before the rent is due, his

⁽g) See Barwick v. Foster (1610), Cro. Jac. 227, 233, Yelv. 167; Biggin v. Bridge (1676), 3 Keb. 534.

⁽h) Hill v. Grange (1556), Plowden, 164, 171; incorrectly cited in Mallory's Case, 5 Rep. 111 b.

⁽i) Hutchins v. Scott (1837), 2 M. & W. 809, 810.

⁽k) Hopkins v. Helmore (1838), 8

A. & E. 463.

⁽l) Clun's Case (1614), 10 Rep. 127 a.

⁽m) Cromwell v. Andrews (1583), Cro. Eliz. 15.

⁽n) De Nicholls v. Saunders (1870), L. R. 5 C. P. 589, per Willes, J., at p. 594.

⁽o) Nash v. Gray (1861), 2 F. & F.

executors will have to account for an apportioned part (p) of the rent to his heir (q). But if the lessor has mortgaged his reversion, the payment is ineffectual as to any rent accruing due after the lessee has notice of the mortgage, and the lessee is liable to pay the rent over again (r).

The tenant has the whole of the day to pay his rent in, and it Payment on is not in arrear until after midnight (s); but even at law a payment on the morning of the rent-day is valid as against the heir of the landlord, in case the latter should die on the same $\mathbf{day}(t)$.

the rent-day.

(4) WHERE RENT IS PAYABLE.

If no other place is appointed by agreement, rent must be Where there paid upon the land demised (u); but if the tenant has expressly covenanted to pay rent, it is his duty to seek out the person to whom the rent is to be paid, and to pay it, or tender it to him, on the appointed day (x). If the sovereign makes a lease for On lease by years reserving rent, without appointing any place for payment, the lessee may pay the rent either at the exchequer or to the bailiffs or receivers authorized by the sovereign to receive it (y).

is no express

sovereign.

(5) To WHOM RENT IS PAYABLE.

Upon the death of any person after 31st December, 1897, his real estate (z) devolves upon his personal representatives for the purpose of being administered by them, so far as necessary, in the same manner as personal estate, and then to be transferred to the persons beneficially entitled (a). Such transfer may be by assent to a devise or by conveyance, but until it is effected the personal representatives are entitled to receive the rents. In the case of an intestacy, it is not settled whether there is any person entitled to receive the rents pending the grant of administration (b).

1. Real representatives.

- See Rockingham v. Penrice (1711), 1 P. W. 177; 1 Swanst. 345, note.
 - (p) Infra, p. 240.
 - (q) Rockingham v. Penrice, supra.
- (\bar{r}) De Nicholls v. Saunders (1870), L. R. 5 C. P. 589; Cook v. Guerra
- (1872), L. R. 7 C. P. 132. (s) Dibble v. Bowater (1853), 2 E. & B. 564. See Duppa v. Mayo (1671), 1 Wms. Saund. at p. 287; judgment of Blackstone, J., in Cutting v. Derby (1776), 2 W. Bl. at p. 1077.
- (t) Clun's Case (1614), 10 Rep. 127 b.
- (u) Co. Litt. 201 b; Boroughes' Case (1596), 4 Rep. p. 73 a. See Rowe v. Young (1820), 2 Br. & B. p. 234; Crouch v. Fastolfe (1680), Sir T. Raym. 418.
- (x) Haldane ∇ . Johnson (1853), 8 Ex. 689, 695.
 - (y) See note (u), supra.
 - (z) See supra, p. 61, note (g).
- (a) Land Transfer Act, 1897, 60 & 61 Vict. c. 65, Part I.
 - (b) See supra, p. 62.

2. Agents.

A tender to an agent authorized to receive payment is as good as a tender to the landlord in person (c). But before paying or tendering rent to an agent the tenant should not only see that the agent has been duly authorized to receive it, but also, in the case of an agent not authorized by power of attorney (d), that his authority has not been revoked by the death or bankruptcy of the landlord (e). If the landlord has held out a person to the tenant as his agent to receive the rent, he cannot withdraw the agent's authority without giving the tenant notice of such withdrawal (f), and until such notice is given the landlord will be bound by the agent's receipts. Hence the landlord's wife, who has acted as his agent on similar occasions before, when her authority was acknowledged, retains such authority till it is countermanded (g). A clause in a lease by deed, whereby the landlord agrees that K., who has no interest in the rent, is to receive all rent from the tenant at all times when it becomes due during the term, and his receipt is to be a full and sufficient discharge from all liability, has been interpreted as a bare authority to receive the rent, and therefore revocable by the landlord upon notice of the revocation to the tenant (h).

3. Mortgagor. Lease before mortgage.

A tenant under a lease made by a mortgagor before the mortgage is perfectly safe in paying the rent to the mortgagor until he has notice of the mortgage from the mortgagee (i). After the mortgagee has given such notice he is entitled to, and may distrain for, all rent in arrear which has accrued due since the mortgage (k). If after notice given by the mortgagee the tenant pays rent to the mortgagor, without any fraud or misrepresentation on the part of the latter, the payment cannot be recovered by the tenant from the mortgagor (l).

Lease after mortgage.

The position of the tenant under a lease made after the

(c) Goodland v. Blewith (1808), 1 Camp. 477, 478. See infra, Chap. IV., Sect. 1 (10) (i) (e); Roscoe's Nisi Prius Evidence, 17th ed. p. 687.

(d) A tenant paying in good faith under a power of attorney is protected by the Conveyancing Act, 1881, s. 47.

(e) As to revocation by lunacy, see Drew v. Nunn (1879), 4 Q. B. D. 661.

(f) See Drew v. Nunn (1879), 4 Q. B. D. p. 667; Trueman v. Loder (1840), 11 A. & E. 589.

(g) Browne v. Powell (1827), 4

Bing. 230, 232. See *Dodd* v. Acklow (1843), 6 M. & Gr. 672.

(h) Venning v. Bray (1862), 2 B. & S. 502.

(i) 4 Anne, c. 16, s. 10; infra, Chap. V., Sect. 1 (5); Trent v. Hunt (1853), 9 Ex. p. 23.

(k) Moss v. Gallimore (1779), 1 Dougl. 279; Rogers v. Humphreys (1835), 4 A. & E. 299; Burrows v. Gradin (1843), 1 D. & L. 213. See Whitmore v. Walker (1848), 2 C. & K. 615.

(l) Higgs v. Scott (1849), 7 C. B. 63.

mortgage depends on whether sect. 18 of the Conveyancing Act i. Not under applies or not. If it does not apply, the tenant may consider Conv. Act, 1881. the mortgager as his landlord so long as the mortgagee allows the mortgager to receive the rents (m). But the mortgagee, if he desires to go into possession, cannot directly enforce payment of rent to himself, for the tenant does not hold under him, nor is a tenancy under the mortgagee created by notice to pay the rent to him (n). The tenancy under the mortgagor continues. and the tenant is estopped from denying it (o). The tenant, however, is liable to be evicted by the mortgagee claiming under title paramount, and if the notice to pay rent to the mortgagee is accompanied by a threat of legal proceedings, the tenant is justified in paying to the mortgagee all rent due since the mortgage not already paid to the mortgagor, and all rent subsequently accruing due (p). A payment so made under compulsion of law, and in consequence of the default of the lessor, is treated as a payment of the rent due to the lessor (q), and may be set up as a satisfaction of such rent without in any way disputing his title (r).

The mere fact of the mortgagee's having given notice to the tenant to pay rent to him, not accompanied by actual payment, is, however, no defence to an action or distress for rent by the mortgagor (s).

If the lease is made under sect. 18 of the Conveyancing Act, 1881, ii. Under the legal reversion on the lease is in the mortgagee, and upon his 1881. giving notice to the tenant he has the like remedies on the covenants in the lease as though the lease had been granted by himself (t).

Upon a lease by several joint tenants, one of them may 4. Co-owners. recover the whole rent and give a discharge for it (u). Upon a lease by tenants in common, the survivor may sue for the whole rent, although the reservation is to the lessors according to their respective interests (x). But if a lessee holding under two tenants in common pays the whole rent to one after notice

(m) Per Bayley, J., in Pope v. Biggs (1829), 9 B. & C. at p. 251.

(n) Rogers v. Humphreys (1835), 4 A. & E. p. 313.

(a) Alchorne ∇ . Gomme (1824), 2 Bing. 54.

 (\bar{p}) Pope v. Biggs (1829), 9 B. & C. 245; Johnson v. Jones (1839), 9 A. & E. 809; Waddilove v. Barnett (1836), 2 Bing. N. C. 538.

(q) Underhay v. Read (1887), 20

Q. B. D. 209.

(r) Johnson ∇ . Jones (1839), 9 A. & E. 809.

(s) Wheeler v. Branscombe (1843), 5 Q. B. 373; Wilton v. Dunn (1851), 17 Q. B. 294. See *Hickman* v. Machin (1859), 4 H. & N. 716.

(t) See sect. 10.

(u) Robinson v. Hofman (1828), 4 Bing. 562, 565.

(x) Wallace v. M'Laren (1828), 1 Man. & Ry. 516. See supra, p. 64.

Conv. Act,

from the other not to pay it, the tenant in common who gave the notice may distrain for his share (y).

5. Assignees.

Upon an assignment of rent, whether with or without the reversion to which it is incident, the assignee may bring an action of debt for the rent (z). A mere authority to pay the rent to a third person, contained in a letter from the lessor addressed to the lessee, where it does not appear that any consideration moves from such third person, is revocable (a); but it is otherwise if a consideration is shown, and the letter then operates as an equitable assignment (b).

Rent actually due (c) to a judgment debtor may be attached in the hands of his tenant (d) by a garnishee order under R.S.C. 1883, Ord. 45.

Tenant not to be prejudiced by payment of rent to grantor before notice.

Payment of rent to person not entitled to it.

Although upon a grant of the reversion an attornment to the grantee is not now necessary (e), yet the tenant is not prejudiced or damaged by payment of rent to the grantor, or by breach of any condition for non-payment of rent (f), before notice is given to him of such grant by the grantee (g).

Payment of rent to a person not entitled to it, with the acquiescence, under a false apprehension, of the person really entitled, has been held not to exonerate the tenant from the duty of paying it to the latter (h). Rent paid by mistake, in ignorance of the death of a person for whose life the premises are held, may be recovered back (i). And, generally, where the tenant has paid rent to A., who has no title, and is subsequently evicted and ordered to pay mesne profits, he can recover the rents from A. in an action for money had and received (k). A representation as to the person entitled to receive rent binds the person making it (l).

- (y) Harrison v. Barnby (1793), 5
 T. R. 246. See Powis v. Smith (1822),
 5 B. & A. 850.
- (z) Robins v. Cox (1661), 1 Lev. 22; Allen v. Bryan (1826), 5 B. & C. 512; Williams v. Hayward (1859), 1 E. & E. 1040, see p. 1050.
- (a) Ex parte Hall (1879), 10 Ch. D. 615.
- (b) Knill v. Provse (1884), 33 W. R. 163.
- (c) Jones v. Thompson (1858), 27 L. J. Q. B. 234.
- (d) Mitchell v. Lee (1867), L. R. 2 Q. B. 259.
 - (e) Infra, pp. 444, 445.

- (f) The necessity for notice of a grant of the reversion before re-entry is confined to the case of re-entry for non-payment of rent: Scaltock v. Harston (1875), 1 C. P. D. 106.
- (g) 4 Anne, c. 16, s. 10. As to the sufficiency of the notice, see Cook v. Guerra (1872), L. R. 7 C. P. 132, 137.
- (h) Williams v. Bartholomew (1798), 1 B. & P. 326.
- (i) Barber v. Brown (1856), 1 C. B. N. S. 121.
- (k) Newsome v. Graham (1829), 10 B. & C. 234.
- (l) White v. Greenish (1861), 11 C. B. N. S. 209.

(6) Amount of Rent Payable.

The rent payable under a written agreement cannot be Parol variaeffectually reduced by a parol variation (m); and though the variation is followed by payment of the reduced rent, this does not per se operate as the creation of a new tenancy (n). Nor does a verbal agreement for an increase of rent (o), though it seems that the increased rent can be recovered in an action for use and occupation (p).

tion of rent.

An additional rent is frequently reserved in case the tenant Increased violates the provisions of his lease, as, for instance, a yearly rent for every acre of land above a certain quantity which he ploughs up or converts into tillage (q). A sum thus reserved is not in general deemed a penalty, but a liquidated satisfaction fixed and agreed upon by the parties (r), and if it has once become payable it is payable as rent annually during the residue of the term (s), even though the land be restored to its original condition (t). The description of land in the lease as meadow does not estop the lessee from proving that it was in fact arable (u).

If the increased rent is expressly reserved payable yearly during the residue of the term after it has once become payable, the contract is construed as giving the lessee the right to do the

(m) Crowley v. Vittey (1852), 7 Ex. 319. See Hilton v. Goodhind (1827), 2 C. & P. 591.

(n) Clarke v. Moore (1844), 1 Jo. & Lat. 723.

(o) Delmeye v. Mullins (1875), I. R. 9 C. L. 209. As to variation in the statement of the amount in collateral instruments, see Lainson v. Tremeere (1834), 1 A. & E. 792.

(p) Burrows v. Gradin (1843), 1 D. & L. 213.

(q) See Fielden v. Tattersall (1863), 7 L. T. 718. As to additional rent in case of occupation by persons other than the lessee, see Greenslade v. Tapscott (1834), 1 C. M. & R. 55; Ponsonby v. Adams (1770), 2 Br. P. C. 431. As to using lands as a racecourse under a provision of this nature, see Aldridge v. Howard (1842), 4 M. & Gr. 921.

(r) Rolfe v. Peterson (1772), 2 Bro. P. C. 436; Farrant v. Olmius (1820), 3 B. & A. 692; Smith v. Ryan (1844),

9 Ir. L. R. 235; Wright v. Tracey (1873), I. R. 7 C. L. 134; Re E. of Mexborough and Wood (1882), 47 L. T. 516; Lord Elphinstone v. Monkland Iron and Coal Co. (1886), 11 App. Cas. 332. See, too, Jones v. Green (1829), 3 Y. & J. 298; Denton v. Richmond (1833), 1 Cr. & M. 734, 742; Pollitt v. Forrest (1847), 11 Q. B. 949; Bray v. Fogarty (1870), I. R. 4 Eq. 544; supra, p. 163. For a case where an additional rent reserved "by way of penalty" for a breach of covenant in the last year of the term only was deemed to be a penalty, see Willson v. Love, [1896] 1 Q. B. 626.

(s) Farrant v. Olmius, supra; Bowers v. Nixon (1848), 12 Q. B.

(t) Birch v. Stephenson (1811), 3 Taunt. p. 478. But see Domville v. Ford (1872), Ir. R. 7 C. L. 534.

(u) Skipworth v. Green (1725), 8 Mod. 311.

act which attracts the additional rent (x), and the Courts have refused to restrain him from doing such act (y). But the question is one of construction as to the meaning of the contract (z); and it seems that where, in addition to the exaction of an increased rent or other sum on the doing of a specified act, the lessee is also made subject to forfeiture (a), or where a single payment only is reserved (b), the Court will restrain the lessee by injunction from doing the act. Where the lessee covenants to do a particular thing, as, in the lease of a public-house, to buy all beer used on the premises from the lessor, with a provision that he shall pay a reduced rent while this is done, he cannot pay the full rent and disregard the covenant (c).

Where there is a right of re-entry on breach of the covenant, it is at the option of the lessor whether he will re-enter or whether he will demand payment of the increased rent (d).

General rule as to set-off against rent. i. On distress.

A tenant cannot, in general, set off against the rent sums due to him from his landlord, or payments made on behalf of his landlord, unless there is a special agreement to that effect (e), for although the sum due to the tenant may be of greater amount than the rent, yet if the rent is not paid the landlord may distrain for it (f). Hence a tenant cannot obtain an injunction against his landlord to restrain proceedings upon a replevin bond on the ground of a set-off against the rent distrained for (g).

(x) Legh v. Lillie (1860), 6 H. & N. 165; infra, p. 372.

(y) Woodward v. Gyles (1690), 2 Vern. 119; Rolfe v. Peterson (1772), 2 Bro. P. C. 436. See French v. Macale (1842), 2 Dr. & W. p. 277; Aylet v. Dodd (1741), 2 Atk. p. 239; Benson v. Gibson (1746), 3 Atk. p. 396; Hardy v. Martin (1783), 1 Cox, 26; Jones v. Green (1829), 3 Y. & J. 298, 304; Gerrard v. O'Reilly (1843), 3 Dr. & W. 414.

(z) French v. Macale (1842), 2

Dr. & W. pp. 276, 284.

(a) Barret v. Blagrave (1800), 5 Ves. 555; French v. Macale (1842), 2 Dr. & W. p. 284. See Weston v. Metrop. Asylum District (1882), 9 Q. B. D. 404.

(b) City of London v. Pugh (1727), 4 Bro. P. C. 395, 397; French v. Macale, 2 Dr. & W. 269, 278. See Jones v. Heavens (1877), 4 Ch. D. 636.

(c) Hanbury v. Cundy (1887), 58

L. T. 155.

(d) Weston v. Metrop. Asylum District (1882), 9 Q. B. D. 405: Doe v. Jepson (1832), 3 B. & Ad. 402.

(e) See Roper v. Bumford (1810), 3 Taunt. 76. If the landlord agrees to allow a specified sum laid out by the tenant in repairs, he can distrain for the whole rent, and the tenant must sue on his special agreement: Graham v. Tate (1813), 1 M. & S. 609; unless he is authorized by the agreement to deduct from the rent: Dallman v. King (1837), 4 Bing. N. C. 105.

(f) Absolom v. Knight (1743), Bull. N. P. 181; Barnes, 450; Lay-cock v. Tufnell (1787), 2 Chit. 531; judgment of Park, J., in Andrew v. Hancock (1819), 1 Br. & B. at p. 46; Willson v. Davemport (1833), 5 C. & P. 531.

(g) Pratt v. Keith (1864), 33 L. J. Ch. 528. See Townrow v. Benson (1818), 3 Madd. 203.

If, however, the landlord, instead of distraining, sues for rent, ii. In action the defendant may plead a set-off (h). It was held by Lord Kenyon that, at common law, in an action of covenant for rent the defendant could not set off any uncertain damages that he might be entitled to recover against the landlord (i); but the present practice allows a defendant in any action to set off any claim, whether sounding in damages or not, unless the Court or Judge refuses permission to the defendant to avail himself of it (k).

The following payments may be deducted by the tenant from Deductions his rent:—Sums paid by the tenant for the landlord's share of property tax (l). Under the Income Tax Acts (m) the tenant rent. may deduct the landlord's income tax, actually paid by the 1. Property tenant (n), out of the next payment of rent; and any contract for the payment of rent in full without allowing the deduction is void (o). Where, however, the rent is reserved clear of property tax, the lease is not altogether void, but the rent is payable subject to the deduction (p). And a covenant to pay the property tax will not avoid a separate covenant for payment of rent clear of taxes generally; for these words will be understood of such taxes as the tenant may lawfully engage to defray (q). A proviso for reduction of rent in case of the repeal or suspension of the Income Tax Acts is good (r); and so is an agreement that if the tenant will pay the rent in full without any deduction in respect of the landlord's property tax, the landlord will repay to the tenant all sums paid for the tax (s). The tenant may deduct the tax, although the landlord is entitled to exemption (t); and, to justify deduction, it is sufficient to prove payment to the collector, without producing the assessment (u). If the landlord refuses

(h) R S. C. 1883, Ord. 19, r. 3. See Roscoe's Nisi Prius Evidence, 17th ed. pp. 696, 720, 721.

(i) Weigall v. Waters (1795), 6 T. R. 488. See, too, Gower v. Hunt (1735), Barnes, 290.

(k) See R. S. C. 1883, Ord. 19, r. 3. (l) See Gabell v. Shevell (1813), 5 Taunt. 81; Rex v. Mitcham (1783), 1 Doug. 226 n.; Franklin v. Carter (1845), 1 C. B. 750.

(m) Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 60; Income Tax Act, 1853 (16 & 17 Vict. c. 34), s. 40; 27 & 28 Vict. c. 18, s. 15. As to houses let in several tenements, see Act of 1853, s. 36.

(n) Proviso to sect. 40 of Act of

1853.

(a) Act of 1842, ss. 73, 103. See *infra*, p. 385.

(p) Fuller v. Abbott (1811), 4 Taunt. 105; Tinckler v. Prentice (1812), 4 Taunt. 549.

(q) Gaskell v. King (1809), 11 East, 165.

(r) Colbron v. Travers (1862), 12 C. B. N. S. 181; Beadel v. Pitt (1865), 11 L. T. 592.

(s) Lamb v. Brewster (1879), 4 Q. B. D. 607.

(t) Swatman v. Ambler (1855), 24 L. J. Ex. 185.

(u) Philips v. Beer (1815), 4 Camp. 266.

which may be made from

When deduction to be made.

to allow for property tax, and distrains for the full rent, the tenant may recover in an action for money had and received (x).

As soon as the tenant has paid the property tax, it is in effect a payment by him of so much of the next rent due to his land-lord (y). But the deduction must be made from the next payment of rent, or the amount cannot afterwards be recovered (z). It is only on the production of a certificate of the tax being paid that the landlord is bound to make the allowance (a). A succeeding occupier may tender in part payment of his rent a receipt for property tax which has become due since the last payment of rent, and has been paid by the former occupier (b); and, if called upon to pay arrears which should have been paid by the former occupier, he may deduct these out of any subsequent payment of rent to the landlord (c).

2. Land tax

Sums paid by the tenant for the landlord's proportion of the land $\tan(d)$ —that is, such proportion of the tax as the rent bears to the assessed annual value of the premises (e); provided there is no agreement to the contrary (f). A payment of land tax can only be deducted from the rent which has then accrued, or is then accruing due; for the law considers the payment of the land tax as a payment of so much of the rent then due, or growing due, to the landlord: and if afterwards the tenant pays the rent in full, he cannot at a subsequent time deduct the former land tax from the rent (g). An excessive deduction permitted, for several years, by mistake by the landlord or his agent, the landlord having the means of knowing all the facts, and there being no fraud or misrepresentation on the part of the tenant, will operate as a payment of so much rent, and the landlord cannot afterwards distrain for sums so deducted, or recover them by

^{(.}r) Graham v. Tate (1813), 1 M. & S. 609.

⁽y) See per Abbott, J., in *Denby* v. *Moore* (1817), 1 B. & A. at p. 129.

⁽z) Denby v. Moore (1817), 1 B. & A. 123; Cumming v. Bedborough (1846), 15 M. & W. 438.

⁽a) Pocock v. Eustace (1809), 2 Camp. 181; Baker v. Davis (1814), 3 Camp. 474.

⁽b) Clennel v. Read (1816), 7 Taunt. 50.

⁽c) Income Tax Act, 1853, s. 35. (d) 38 Geo. 3, c. 5, s. 17; Hyde v.

Hill (1789), 3 T. R. 377; Ward v. Const (1830), 10 B. & C. 635, per Parke, J., p. 654.

⁽e) See judgment of Bayley, J., in Stubbs v. Parsons (1820), 3 B. & A. 519; Whitfield v. Brandwood (1818). 2 Stark. 440.

⁽f) 38 Geo. 3, c. 5, s. 35.

⁽g) Per Bayley, J., in Stubbs v. Parsons, 3 B. & A. at p. 520; Andrew v. Hancock (1819), 1 Br. & B. 37; Saunderson v. Hanson (1828), 3 C. & P. 314; Spragg v. Hammond (1820) 2 Br. & B. 59.

action as arrears of rent (h). Where the lessee is bound to pay the land tax, and the tax is redeemed by a person beneficially entitled to the rent, the amount of the land tax is to be considered as rent reserved, and may be recovered accordingly (i).

Sums paid by the tenant for the landlord's proportion of a 3. Sewers sewers rate may be deducted in the absence of any agreement to the contrary (k); but the deduction must be made from the rent for the current year (l).

rate.

Rates imposed for local improvements are usually recoverable 4. Local imby the local authority from the occupier, who is authorized, in provement the absence of an agreement, to deduct them from his rent. Thus draining and paving expenses incurred by the local authority under the Metropolis Management Act, 1855 (m), may under the Metropolis Management Amendment Act, 1862 (n), be recovered either from the owner or the occupier, and in the latter case the owner must allow the occupier to deduct the rate from his rent; but this provision is without prejudice to any contract under which the occupier is bound to pay rates. The tenant cannot deduct unless he has actually paid the rate (o). however, he has so paid, the landlord cannot afterwards distrain for the amount, though he may still have a right of action against the tenant upon a covenant by the latter to pay rates (p).

Similar provision is made with respect to expenses incurred in abating nuisances and private improvement expenses under the Public Health Act, 1875 (q). Thus where the occupier by whom any private improvement rate is paid holds the premises in respect of which the rate is made at a rent not less than the rack-rent (r), he is entitled to deduct from his rent three-fourths

⁽h) Bramston v. Robins (1826), 4 Bing. 11; Waller v. Andrews (1838), 3 M. & W. 312.

⁽i) 42 Geo. 3, c. 116, s. 126. See Ward v. Const (1830), 10 B. & C. 635; Faulkner v. Llewellin (1863), 9 L. T. 251, 557.

⁽k) The Land Drainage Act, 1861 (24 & 25 Vict. c. 133), s. 38; Smith v. • Humble (1854), 15 C. B. 321. See Tidswell v. Whitworth (1867), L. R. 2 C. P. p. 336. As to ratepayers in metropolitan boroughs, see sect. 12 of the London Government Act, 1899 (62 & 63 Vict. c. 14).

⁽l) See Andrew v. Hancock (1819), 1 Br. & B. 37; Saunderson v. Hanson

^{(1828), 3} C. & P. 314.

⁽m) 18 & 19 Vict. c. 120, ss. 73, 105.

⁽n) 25 & 26 Vict. c. 102, s. 96.

⁽o) Ryun v. Thompson (1868), L. R. 3 C. P. 144.

⁽p) Skinner v. Hunt (1904), 20 T. L. R. 176.

⁽q) 38 & 39 Vict. c. 55; see sects. 104, 150, 214, 226. As to the levying of a local rate where a house is let in parts, see Lobban v. Cooke (1858), 3 H. & N. 238.

⁽r) "Rack-rent" is defined by sect. 4 as rent which is not less than two-thirds of the full net annual value of the property out of which the rent arises.

of the amount paid by him on account of such rate; and if he holds at a rent less than a rack-rent he is entitled to deduct from his rent such proportion of three-fourths of the rate as his rent bears to the rack-rent (s).

5. Copyhold enfranchisement rentcharge. An occupying tenant who properly pays on account of a rentcharge created on the enfranchisement of copyhold lands under the Copyhold Act, 1894 (t), any money which, as between himself and his landlord, that tenant is not liable to pay, is entitled to recover from the landlord the money paid, or to deduct it from the next rent payable by the tenant; and an intermediate landlord who pays or allows any sum under this provision may in like manner recover it from his superior landlord or deduct it from his rent (u).

6. Tithe rentcharge. Formerly tithe rent-charge was recoverable from the occupier by distress, and the occupier who paid the rent-charge was, in the absence of agreement, entitled to deduct it from his rent (x)—that is, from the next payment of rent (y), though, inasmuch as there was no personal liability on the landlord to pay the rent, he was not bound to indemnify the tenant against the consequences of a distress (z). But by the Tithe Act, 1891 (a), the remedy by distress is abolished, and the tithe rent-charge is recoverable, where the land is in the occupation of a tenant, only by the appointment by the county court of a receiver of the rents (b). This method applies also to any sums directed by the earlier Tithe Acts or the Extraordinary Tithe Redemption Act, 1886 (c), to be recovered as tithe rent-charge (d), including redemption money (e).

The effect is that the tithe rent-charge is now payable only by the owner (f); and it is expressly enacted by the Tithe Act, 1891 (g), that "any contract made between an occupier and owner of lands, after the passing of this Act, for the payment of the tithe rent-charge by the occupier, shall be void." The effect of

(t) 57 & 58 Vict. c. 46, ss. 8, 17.

(u) Sect. 27. (x) The Tithe Act, 1836 (6 & 7 (b) 54 Vict. c. 8, s. 2. (c) 49 & 50 Vict. c. 54.

⁽s) 38 & 39 Vict. c. 55, s. 214. As to deduction by mesne lessees, see the latter part of the same section.

Will. 4, c. 71, s. 80); see sect. 70. (y) Dawes v. Thomas, [1892] 1 Q. B. 414.

⁽z) Griffenhoofe v. Daubuz (1855), 4 E. & B. 230; 5 E. & B. 746.

⁽a) 54 Vict. c. 8. See Tithe Rentcharge Recovery Rules, 1891.

⁽d) 54 Vict. c. 8, s. 10 (4). (e) R. v. Paterson, [1895] 1 Q. B. 31.

⁽f) That is, the person in receipt of rent from the occupier: Peed v. King (1894), 11 T. L. R. 18.
(g) 54 Vict. c. 8, s. 1 (1).

this enactment is to prohibit an agreement by a tenant to reimburse his landlord any sums paid by the latter for tithe rentcharge, as well as an agreement by the tenant to pay the tithe rent-charge directly to the tithe-owner (h). Where, however, a contract for payment of tithe rent-charge by an occupier has been made before the Act, the occupier is not bound by it, but he is liable to pay to the owner such sum as the owner has properly paid on account of the tithe rent-charge which such occupier was liable under his contract to pay, exclusive of any costs incurred or paid by the owner in respect of such tithe rentcharge (i); and such sum is recoverable from the occupier by distress in like manner as is provided by 6 & 7 Will. 4, c. 71, ss. 81, 85, and the enactments amending those sections, and not otherwise (k). The position of the tenant is similar in respect of a tithe rent-charge created under the Extraordinary Tithe Redemption Act, 1886 (l). Such a rent-charge is only chargeable on land in respect of which at the date of the passing of the Act extraordinary tithe was payable (m). Rates imposed on tithe rent-charge are assessed on and recovered from the owner, and not on and from the occupier (n).

Where compensation from a landlord to his tenant (o), due under any of the Agricultural Holdings Acts, 1883 to 1900 (p), or under any custom or contract, has been ascertained before the landlord distrains for rent due, the amount of such compensation may be set off against the rent due, and the landlord is not entitled to distrain for more than the balance (q).

7. Compensation under Agricultural Holdings Acts.

Compulsory payments made by an under-tenant of arrears of 8 Rent due rent due from the original tenant to the original landlord, for to original landlord, for landlord. which the goods of the under-tenant are liable to be distrained (r).

(1) 49 & 50 Vict. c. 54, s. 7. See Tithe Act, 1891, ss. 9 (2), 10 (4).

(m) Simmonds v. Heath, [1894] 1

Q. B. 29.

(n) 54 Vict. c. 8, s. 6, repealing 6 & 7 Will. 4, c. 71, s. 70, and 1 Vict. c. 69, s. 8. As to arrears of rates due before the passing of the Tithe Act, 1891, see Roberts v. Potts, [1894] 1 Q. B. 213.

(o) I.e., compensation for improvements.

(p) As to these Acts generally, see infra, Chap. VII., Sect. 4.

(q) Sect. 47 of the Agricultural Holdings Act, 1883.

(r) Sapsford v. Fletcher (1792), 4 T. R. 511; Carter v. Carter (1829), 5 Bing. 406; Sturgess v. Farrington

⁽h) See Lord Ludlow v. Pike, [1904] 1 K. B. 531, and the comments of Channell, J., at p. 533, on Duries v. Fitton (1842), 2 Dr. & War. 225, 236. (i) 54 Vict. c. 8, s. 1 (2). See Hughes v. Rimmer, [1893] 2 Q. B. 314.

⁽k) Sect. 1 (3). Although the tenant enters into an express agreement for payment of the sum in order to avoid a distress, such agreement is not enforceable: Church v. Maxted, [1898] 67 L. J. Q. B. 823.

TERMS OF TENANCY.

A payment of such rent by the occupier, in default of the original tenant, is not the less a compulsory payment, because the original landlord on demanding it allows the occupier time to pay (s). It has been said that the payment must have been preceded by a demand accompanied by a threat, in case of nonpayment, to distrain, or to eject, or to "put the law in force" (t), but apparently the mere demand is sufficient (u).

Compulsory payments are held to be payments of the rent itself or part of it, and consequently may be pleaded by way of set-off, although as against a distress a general set-off is not allowed (x).

Rent growing due may be discharged by such payments as well as rent actually due (s).

Lodger.

If upon a distress being made upon goods of a lodger in the tenant's house the lodger gives notice that the goods are his, the distress is not to be proceeded with; but the lodger may, on taking the steps required by the statute, pay to the landlord any rent due from him (y), and any such payment is to be deemed a valid payment on account of rent due to his immediate landlord (z).

9. Other compulsory payments.

If premises are liable to a distress, the tenant has a right to pay the charge to which they are liable, and to deduct from his rent the sum so paid (a). Payment by a tenant of an annuity or a legacy secured by power of distress (b) or of interest due on a mortgage made before the commencement of the tenancy (c), is considered as equivalent to payment of so much rent to the But in order to operate as a deduction from rent the money must have been actually paid (d); and the payment must be made either to relieve the tenant of an incumbrance on the land, or to discharge a debt due by the landlord (e).

(1812), 4 Taunt. 614. See O'Donoghue v. Coalbrook, &c., Co. (1872), 26 L. T. 806; Wilkinson v. Cawood (1797), 3 Anst. 905; Doe v. Hare (1833), 2 Cr. & M. 145.

(8) Carter v. Carter (1829), 5 Bing. 406.

(t) Whitmore v. Walker (1848), 2 C. & K. 615; Taylor v. Zamira (1816), 6 Taunt. 524.

(u) See Carter \mathbf{v} . Carter (1829), 5 Bing. p. 409.

(x) Graham v. Allsopp (1848), 3 Ex. 186, per Rolfe, B., at p. 198.

(y) Lodgers' Goods Protection Act, 1871 (34 & 35 Vict. c. 79), s. 1; infra, p. 268.

(z) Sect. 3.

(a) Per Burrough, J., in Taylor v. Zamira (1816), 6 Taunt. at p. 529.

(b) Taylor v. Zamira, 6 Taunt. 524; Whitmore v. Walker (1848), 2 C. & K. 615.

(c) Johnson v. Jones (1839), 9 A. & E. 809, 814; Underhay v. Read (1887), 20 Q. B. D. 209; Dyer v. Bowley (1824), 2 Bing. 94.

(d) Supra, pp. 229—231. See Ryan v. Thompson (1868), L. R. 3 C. P. 144.

(e) See judgment of Cresswell. J., in Boodle v. Cambell (1844), 7 M. & Gr. 386, at p. 397; Graham v. Allsopp (1848), 3 Ex. 186.

destroyed by

If the demised premises are destroyed or rendered uninhabit- Premises able by fire, the full rent will nevertheless, in the absence of an destroyed fire, &c. express stipulation to the contrary (f), continue to be payable throughout the term granted by the lease (g), although the landlord refuses to rebuild, and even though he has received insurance money (h); and it is the same, though the lessee covenants to repair with an express exception of casualties by fire (i). Under these circumstances, an injunction will not be granted to restrain the landlord from suing for the rent (k). But where it appeared that the rent of furnished lodgings had been treated by the parties as compensation for occupation accruing from day to day, the rent stopped upon the lodgings becoming useless through fire (l).

On the same principle, the tenant of a building is liable to pay rent after it has been carried away by a flood (m), or occupied by an alien enemy (n); and the tenant of land must also pay rent, though the land is covered with fresh water by an inundation, though not, it has been said, where it is invaded by the sea (o). And where there is a provision for suspension of rent in certain events, the lessee must pay the rent if the building is rendered useless by an event not specified (p).

If a person contracts for the use and occupation of land for a Premises unfit specified time and at a specified rent, he is bound by his bargain, though the land may not answer the purpose for which he took it. If, for instance, the land should turn out to be wet, or the grass, from any reason, should prove to be deleterious to cattle, that would be no excuse for not paying the lessor his rent (q), nor

for use or habitation.

(f) See Bennett v. Ireland (1858), L. B. & E. 326.

(g) Baker v. Holtzapffel (1811), 4 Taunt. 45; Izon v. Gorton (1839), 5 Bing. N. C. 501, 7 Scott, 537; Monk v. Cooper (1727), 2 Stra. 763; Marshall v. Schofield & Co. (1882), 52 I. J. Q. B. 58. Rent will continue to be payable though the intended use of the premises is rendered illegal by statute: Gibbons v. Chambers (1885), C. & E. 577.

(h) Leeds v. Chectham (1827), 1 Sim. 146; Lofft v. Dennis (1859), 1 E. & E. 474.

(i) Belfour v. Weston (1786), 1 T. R. 310; Hare v. Groves (1796), 3 Anstr. 687.

(k) Holtzapffel v. Baker (1811), 18 Ves. 115; Leeds v. Cheetham (1827),

1 Sim. 146.

(l) Packer v. Gibbins (1841), 1 Q. B. 241.

(m) Carter ∇ . Cummins (1665), cited in Harrison v. North, 1 Cas. in Ch. at

(n) Paradine v. Jane (1648), Aleyn, 26. See Harrison v. North (1667), 1 Cas. in Ch. 83.

(v) 1 Roll. Abr. 236 (C.).

(p) Saner v. Bilton (1878), 7 Ch. D. 815; Manchester Bonded Warehouse Co. v. Carr (1880), 5 C. P. D. 507. As to payment of rent by a lessee of tithes, where the tithes are commuted for a rent-charge, see Tasker ∇ . Bullman (1849), 3 Ex. 351.

(q) Per Lord Abinger, C.B., in Sutton v. Temple (1843), 12 M. & W. at p. 62.

would the fact that the land was originally of no value (r). Again, where a man had taken a reversionary lease of a licensed public-house, and before the time when the lease came into possession the licence had been forfeited, it was held that he could not repudiate his bargain (s). So also, in the absence of fraud, the tenant is not exonerated from payment of rent, though an unfurnished dwelling-house taken by him for immediate occupation is unfit for habitation (t).

Non-repair by landlord.

It is no defence to an action for rent that the landlord is under an implied contract to repair the demised premises, and that by his neglect they have become useless to the tenant (u).

Ejectment.

Rent is not recoverable for the period after the lessor has brought an ejectment for a forfeiture (x).

Eviction.

An eviction of the tenant by the landlord or by a person lawfully claiming under title paramount will constitute a defence to an action for rent or for use and occupation (y); but the defendant is bound to show that the eviction took place before the rent became due (z). An eviction of the tenant by the landlord from part of the demised premises operates as a suspension of the entire rent during the continuance of the eviction (a), and the landlord cannot sue the tenant for compensation for use and occupation in respect of any part of the premises of which the tenant retains possession (b). But the tenancy is not thereby put an end to, nor is the tenant discharged from the performance of his covenants other than the covenant for payment of rent (c), though during the eviction the landlord cannot insist on forfeiture for non-performance of covenants (d).

- 10 C. L. 395.
- (s) Blum v. Ansley (1900), 64 J. P. 184; 16 T. L. R. 249.
- (t) Hart v. Windsor (1843), 12 M. & W. 68. As to a furnished house, see infra, p. 356.
- (u) Surplice v. Farnsworth (1844), 7 M. & Gr. 576.
- (x) Jones v. Carter (1846), 15 M. & W. 718. See Birch v. Wright (1786), 1 T. R. 378. lessor will recover compensation for the detention of the premises as damages.
- (y) Tomlinson v. Day (1821), 2 Br. & B. 680; Prentice v. Elliott (1839), 5 M. & W. 606.
 - (z) See Boodle v. Cambell (1844), 7

(r) Meath v. Cuthbert (1876), Ir. R. M. & Gr. 386; Selby v. Browne (1845), 7 Q. B. 620; Newport v. Hardy (1845), 2 D. & L. 921. 17. Mountnoy v. Collier (1853), 1 E. & B.

> (a) Morrison v. Chadwick (1849), 7 C. B. 266. See Furnivall v. Groce (1860), 8 C. B. N. S. 496.

- (b) Upton v. Townend (1855), 17 C. B. 30. See Reeve v. Bird (1834), 1 C. M. & R. p. 36; Hutchinson v. Taylor (1884), 77 L. T. Newsp. p. 120.
- (c) Morrison v. Chadwick, supra: Newton v. Allin (1841), 1 Q. B. 518.
- (d) Pellatt v. Boosey (1862), 31 L. J. C. P. 281.

To constitute an eviction of a tenant by his landlord which What conwill operate as a suspension of rent, it is not necessary that there eviction. should be an actual physical expulsion from any part of the premises; any act of a permanent character done by the landlord or by his authority, with the intention of depriving the tenant of the enjoyment of the premises as demised, or any part of them, will operate as an eviction (e). Whether such intention does or does not exist is a question for a jury (f). But a mere trespass by the lessor does not constitute an eviction (g). Where the lessor gave notice to quit to the under-tenants, and parts of the demised lands were in consequence left unoccupied, this was said to be an eviction of the lessee (h).

Where a tenant from year to year quits at the end of the Reletting current year without notice, and before the expiration of the next half-year the landlord lets the premises to another tenant, who occupies them, such letting constitutes an eviction of the previous tenant (i), and the landlord is not entitled to recover rent from him for the period which elapsed from the time when he quitted the premises to the time when the landlord relet them (k), or for any subsequent period during which they may be unoccupied (1). The landlord who relets should give notice to the former tenant that he lets the premises solely on such tenant's account (l).

by lessor.

If while a tenant is in possession of premises the landlord Entry by enters and uses any part of them, he thereby deprives himself of his claim to rent (m).

So also if, after a tenant has left a house unoccupied, the landlord enters and is in profitable occupation of the house, he cannot recover rent from the tenant after such occupation; but this result will not be produced by merely putting a person into the house to take care of it and prevent depredations (n). lord of apartments deserted by the tenant may recover rent,

⁽e) Upton v. Townend (1855), 17 C. B. 30; notes to Salmon v. Smith (1669), 1 Wms. Saund. 206. Baynton v. Morgan (1888), 22 Q. B. D.

⁽f) Upton v. Townend (1855), 17 C. B. 30; Henderson v. Mears (1859), 7 W. R. 554. See Wheeler v. Stevenson (1860), 6 H. & N. 155.

⁽g) Newby ∇ . Sharpe (1878), 8 Ch. D. 39, p. 51; Hunt v. Cope (1775), Cowp. 242.

⁽h) Burn v. Phelps (1815), 1 Stark.

^{94.} (i) Judgment of Holroyd, J., in Hall v. Burgess (1826), 5 B. & C. at

p. 333. (k) Hall v. Buryess (1826), 5 B. & C. 332.

⁽l) Walls \forall . Atcheson (1826), 3 Bing. 462.

⁽m) Smith v. Raleigh (1814), 3 Camp. 513; Griffith v. Hodges (1824), 1 C. & P. 419, 420.

⁽n) Bird v. Defonvielle (1846), 2 C. & K. 415.

although he has put up a bill in the window for the purpose of letting them (o), or has lighted fires in the rooms and made some use of such fires (p).

Eviction by title paramount. Similarly, where eviction by title paramount is set up as a defence to an action for rent, it appears that a constructive eviction is sufficient, and a constructive eviction takes place where a person entitled to the land threatens the tenant with eviction, and the tenant thereupon attorns to him (q). In the case, for example, of a lease made by a mortgagor in possession which, apart from the Conveyancing Act, 1881, is void as against the mortgagee, so that the mortgagee may eject the tenant and afterwards let to him, it has been said to be absurd to require the mortgagee to go through the form of ejectment (r). On the other hand, such a doctrine would lead to great danger of collusion (s), and it is not applicable where the tenant gives up possession voluntarily (t). The lessee who relies on this defence must show the evictor's title (u).

(7) Apportionment of Rent.

In respect of estate.

1. On grant or devise of part of reversion.

2. On severance of reversion on death of lessor intestate.

As a general rule rent due under a lease will be apportioned upon a severance of the reversion, whether the severance takes place by the act of the parties or the act of law, rent-service in this respect differing from a rent-charge (v). Consequently it is apportionable where the lessor has granted (x) or devised (y) part of the reversion to the lessee or a stranger; where, in the case of a lease including both freehold and leasehold premises, upon the death of the lessor intestate the reversion in the demised premises is divided by operation of law between his real and personal representatives (z); or where the reversion descends to coparceners, and a partition is made between them (y).

(o) Redpath v. Roberts (1801), 3 Esp. 225.

(p) See note (m), p. 237.

(q) Mayor of Poole v. Whitt (1846), 15 M. & W. 571; Carpenter v. Parker (1857), 3 C. B. N. S. pp. 234, 235; Hill v. Saunders (1825), 4 B. & C. 529; Newport v. Hardy (1845), 2 D. & L. 921.

(r) Doe v. Barton (1840), 11 A. & E.

p. 315.

(s) Delaney v. Fox (1857), 2 C. B. N. S. p. 778. See Dunn v. Di Nuovo (1841). 3 M. & Gr. 105.

(1) Re Emery and Barnett (1858), 4 C. B. N. S. 423. (u) Mayor of Poole v. Whitt, supra; Jordan v. Twells (1736), Cas. temp. Hard. 171; Simons v. Farren (1834), 1 Bing. N. C. 272. See Foster v. Pierson (1792), 4 T. R. 617; Hudgson v. East India Co. (1799), 8 T. R. 278.

(v) Litt. sect. 222; Co. Litt. 148a; Collins and Harding's Case (1597), 13 Rep. 57. See Cruise, Dig. 303—306.

(x) Co. Litt. 148 a; West v. Lass (1601), Cro. Eliz. 851.

(y) See Ewer v. Moyle (1600), Cro. Eliz. 771.

(z) Moodie v. Garnance (1619), 3 Bulstr. 153.

But the lessee is not bound by an apportionment of rent made upon the grant of part of the reversion, unless it is made either with his consent or by the verdict of a jury (a).

And the rent is equally apportionable where the lessee ceases 3. On tenant's to have possession of part of the demised premises, provided he is not wrongfully evicted. Thus it is apportioned where the lessee has surrendered part of the demised premises to the lessor (b), or has been lawfully evicted from part of the demised premises by a person having a title paramount to that of the lessor (c); or where the lessor has entered upon part of the demised premises upon a forfeiture under a special condition for re-entry into part (d). In case of eviction it lies upon the lessee to show the value of the land lost and the apportionment (e).

Where part of the demised land has been irretrievably lost from natural causes, as where it has been overflowed by the sea, the rent is apportionable, though not, it seems, where it has been covered with fresh water (f).

In the case where the lessee cannot obtain possession of part Failure to get of the demised premises the rent is not apportionable, but is either extinguished or is left intact according to circumstances. If the lease is by parol, no part of the rent is recoverable (q). it is the same though the lease is under seal, if a part of the demised premises is rightfully held under a title adverse to the If, however, the lease is under seal, and at the date of it a portion of the demised lands is held under a prior lease from the lessor, the second lease operates as a lease in possession of the lands of which at its date the lessor had possession, and as a lease of the reversion, with the rent incident thereto, of the rest, and the whole rent is recoverable from the lessee (i).

It seems that rent can be apportioned only where it is due in Personal respect of a contract real or a contract based upon privity of lessee.

possession.

```
(a) Bliss v. Collins (1822), 5 B. &
A. 876.
```

losing possession of part of premises.

⁽b) Co. Litt. 148 a; per Popham, J., in Smith v. Malings (1608), Cro. Jac.

⁽c) Smith v. Malings (1608), Cro. Jac. 160. See Stevenson v. Lambard (1802), 2 East, 575; Doe v. Meylor (1814), 2 M. & S. 276; Tomlinson v. Duy (1821), 2 Br. & B. 680; Hartley v. Maddocks (1899), 47 W. R. 573; Co. Litt. 148 b.

⁽d) Walker's Case (1587), 3 Rep. p. 22 b; Collins and Harding's Case

^{(1597), 13} Rep. p. 58.

⁽e) Smith v. Malings (1608), Cro. Jac. 160.

⁽f) 1 Roll. Abr. 236 (C.); supra, p. 235.

⁽g) Neale v. Mackenzie (1836), 1 M. & W. 747; 2 Cr. M. & R. 84. See Watson v. Waud (1853), 8 Ex. 335, **339**.

⁽h) Holgate v. Kay (1844), 1 C. & K. 341.

⁽i) Ecc. Comm. v. O'Connor (1858), 9 Ir. C. L. R. 242.

estate (k). It can be apportioned, therefore, against a lessee in

lessee after assignment is liable for rent only on his personal

covenant to pay it, and, on the ground that such a covenant is

not apportionable, it may be that, even after a surrender of a

portion of the demised premises by his assignee, he remains

possession, and also against the assignee of the lessee.

But a

Lands Clauses Act, 1845. liable to be sued for the whole rent (l).

Where a portion of lands in lease is taken under the Lands Clauses Act, 1845 (m), the rent may be apportioned by agreement between the lessor and lessee on the one part and the promoters of the undertaking on the other part, and, failing agreement, as

directed by the Act (n). Provision for apportionment of rent is also made by the Agricultural Holdings Act, 1883 (o), in the case of a tenant from year to year receiving notice under sect. 41 to

quit part of a holding.

Lease of land and goods.

Agricultural Holdings Act.

1883.

If a lease includes lands and goods, and the lessee is evicted from the land, the rent, which issues wholly out of the land, is gone, and there can be no apportionment (p).

Apportionment in respect of time.

Apportionment Act, 1870.

Sect. 2.

At common law there was no apportionment of rent in respect of time (q), but this was permitted for certain cases by 11 Geo. 2, c. 19, and 4 & 5 Will. 4, c. 22 (r), and is now allowed generally under the Apportionment Act, 1870 (s), which provides as follows:—

"All rents (t), annuities, dividends, and other periodical payments in the nature of income (whether reserved or made payable

(k) West v. Lassels (1601), Cro. Eliz. 851. See Walker's Case (1587), 3 Rep. 22 a.

(1) See the judgments of the Court of Appeal in Baynton v. Morgan (1888), 22 Q. B. D. 74, and the observations of Lord Esher (at p. 76) on Stevenson v. Lambard (1802), 2 East, 575. See, too, Cruise, Dig. III. 304; and cf. Mayor of Swansea v. Thomas (1882), 10 Q. B. D. 48.

(m) 8 & 9 Vict. c. 18. As to apportionment in the case of land taken for any of the purposes of the Church Building Acts, see 17 & 18 Vict. c. 32, s. 1; and in the case of land taken for the purpose of sites for schools under 4 & 5 Vict. c. 38, and 7 & 8 Vict. c. 37, see 12 & 13 Vict. c. 94, s. 1.

(n) 8 & 9 Vict. c. 18, s. 119.

(o) 46 & 47 Vict. c. 61.

(p) Emott v. Cole (1591), Cro. Eliz. 255. See Read v. Lawnse (1562), Dy. 212 b. But where the land and goods devolve upon different persons, it may be that the rent will be apportioned: Salmon v. Matthews (1841), 8 M. & W. 827; supra, p. 219.

(q) Clun's Case (1614), 10 Rep. p. 128 a. See Grimman v. Legge (1828), 8 B. & C. 324; Slack v. Sharpe

(1838), 8 A. & E. p. 373.

(r) The Apportionment Act, 1834. See also 6 & 7 Will. 4, c. 71; 14 & 15 Vict. c. 25; 23 & 24 Vict. c. 154; Mills v. Trumper (1869), 4 Ch. 320; Re M. of Anglesey's Estate (1874), L. R. 17 Eq. 283.

(s) 33 & 34 Vict. c. 35.

(t) Including rent-service, rentcharge, and rent-seck, and also tithes

under an instrument in writing or otherwise) shall, like interest on money lent, be considered as accruing from day to day, and shall be apportionable in respect of time accordingly."

"The apportioned part of any such rent, annuity, dividend, or other payment shall be payable or recoverable in the case of a continuing rent, annuity, or other such payment when the able at time entire portion of which such apportioned part shall form part shall become due and payable, and not before; and in the case of a rent, annuity, or other such payment determined by re-entry, death or otherwise, when the next entire portion of the same would have been payable if the same had not so determined, and not before."

Sect. 3. Apportioned part to be paywhen entire portion is payable.

Under sect. 4 of the same Act persons entitled to apportioned parts of rent have the same remedies for recovering them when payable as they would have had in respect of the entire rent if entitled thereto; but at the same time the lessee is not to be liable for any apportioned part specifically. The rent is recoverable by the heir or other person who would, but for the apportionment, be entitled to the entire rent, and he holds it subject to distribution.

The Act, which applies to all instruments whether coming into operation before or after its passing (u), does not alter the relation of landlord and tenant so as to make rent fall due before the day specified in the lease (x). But it is only intended to apply to sums which are accruing, but have not accrued due, at the time when the apportionment is said to be required. It does not apply to any sum—e.g. rent payable in advance—accrued due before the happening of the incident which is said to necessitate or require the apportionment (y). After the entire rent has fallen due, it enables an apportionment to be made against a tenant who has held for only part of the time. The Act affects not only the right to recover rent, but the liability to the payment of rent (z). It applies to the liability to pay, as well as to the right to receive. Hence, where an assignment of a lease is made between two half-yearly rent-days, the assignee is not liable to pay the full

and all periodical payments or renderings in lieu of or in the nature of rent or tithe: sect. 5. Apportionment under the Act can be excluded by express stipulation: sect. 7.

(u) Re Cline's Estate (1874), L. R. 18 Eq. 213; Lawrence v. Lawrence

(1884), 26 Ch. D. 795.

(x) Re United Club (1889), 60 L. T 665. See Re Lucas (1885), 55 L. J. Ch. 101.

(y) Ellis v. Rowbotham, [1900] 1

Q. B. 740, 744.

(z) Per Vaughan Williams, J., in Re Wilson (1893), 62 L. J. Q. B. p. 632.

amount of the half-year's rent falling due on the rent-day next after the date of the assignment, but only an apportioned part of that half-year's rent, computed from the last-mentioned date (a). Similarly, where the trustee of a bankrupt lessee ceases to be liable on assigning the term, the lessor can recover against him a proportionate part of the rent up to the date of assignment, but no more (b). But a landlord who wrongfully evicts a tenant cannot recover an apportioned part of the rent (c).

(8) PAYMENT OF RENT.

Rent a specialty debt. Bill or note. Rent, whether the demise be by parol or under seal, is a debt of equal degree with a debt by specialty (d).

A bill of exchange, or promissory note, given by a tenant to his landlord for rent in arrear, will not, until payment is actually made, operate as a satisfaction of the rent, or take away, or even postpone, the right of the landlord to distrain, or to avail himself of his other remedies for recovering the rent, unless there is an agreement to that effect (e); though the taking of a bill of exchange is some evidence of an agreement by the landlord to suspend his remedy by distress during the currency of the And it makes no difference that judgment has been bill (f). obtained on the bill, if the judgment has not in fact produced satisfaction (g). But if a bill is given to the landlord's agent, and the agent discounts the bill, and pays the money to the landlord, this is a payment of the rent (h). An agreement by the landlord to accept interest on rent in arrear does not postpone the right of distress (i).

Agreement to take interest.

Remittance by post.

If a landlord has either expressly or impliedly authorized his tenant to remit his rent by post, the money is remitted at the

(a) Glass v. Patterson (1902), 2 Ir. R. 660.

(b) Swansea Bank v. Thomas (1879), 4 Ex. D. 94. See report in 40 L. T. at p. 560; and see Re Johnson (1894), 70 L. T. 381; Hartcup & Co. v. Bell (1883), C. & E. 19; Re South Kensington Co-operative Stores (1881), 17 Ch. D. 161.

(c) Clapham v. Draper (1885), C. & E. 484.

(d) Gage v. Acton (1700), 1 Salk. 325; Vincent v. Godson (1854), 4 D. M. & G. p. 551; Re Hastings (1877), 6 Ch. D. 610; Kidd v. Boone (1871), L. R. 12 Eq. 89. As to the

effect of a judgment for rent on the right to distrain, see infra, p. 245.

(e) Davis v. Gyde, 2 A. & E. 623; Harris v. Shipway (1744), Bull. N. P. 182. See Palfrey v. Baker (1817), 3 Price, 572; Davidson v. Allen (1886). 20 L. R. Ir. 16; Talbot v. E. of Shrewsbury (1873), 16 Eq. 26.

(f) Palmer v. Bramley, [1895] 2 Q. B. 405.

(g) Drake v. Mitchell (1803), 3 East, 251.

(h) Parrott v. Anderson (1851), 7 Ex. 93.

(i) Skerry v. Preston (1813), 2 Chit. 245.

peril of the landlord (k); provided the tenant has used due caution in delivering the letter at a post-office (l). Otherwise it is at the peril of the tenant (k).

An agent of the landlord who takes a cheque for the rent Payment by without authority to receive payment in that way may be liable to pay the full amount to the landlord if the cheque is dishonoured (m).

(9) Effect of Payment of Rent.

Payment of rent raises a presumption that the party receiving Asevidence of it has a good title to the rent; but if made to a person from whom the tenant did not originally receive possession of the demised premises, the presumption may be rebutted (n). Hence a tenant who has come into possession under a former owner, and has paid, or agreed to pay, rent to a person who claims to be succeeding owner, in ignorance of a defect in the title of such person, may show that the claimant is not the landlord (o). Payment of rent by a lessee to a lessor after the lessor's title has expired, and after the lessee has notice of an adverse claim, does not amount to an acknowledgment of title in the lessor, or to a virtual attornment, unless at the time of payment the lessee knows the precise nature of the adverse claim, or the manner in which the lessor's title has expired (p). Before the lessee can be bound by such payment as creating a new tenancy, the lessor must say openly, "My former title is at an end; will you, notwithstanding, go on?" (p). Accordingly, where an occupying tenant had paid rent to a receiver appointed by mortgagees after service upon him (the tenant) of a writ for recovery of possession of the premises, it was held that, inasmuch as the mortgagees were in no way misled by the payment, it did not estop the tenant from showing, upon a claim for subsequent

⁽k) Norman v. Ricketts (1886), 3 T. L. R. 182; Luttges v. Sherwood (1895), 11 ib. 233; Pennington v. Crossley & Sons, Lim. (1897), 13 ib. 513; Warwicke v. Noakes (1791), Peake, N. P. C. 67.

⁽l) Hawkins v. Rutt (1793), Peake, N. P. C. 186.

⁽m) Papé v. Westmacott, [1894] 1 Q. B. 272.

⁽n) Judgment of Gibbs, C.J., in Rogers v. Pitcher (1815), 6 Taunt. at

p. 208; Cornish v. Searell (1828), 8 B. & C. 471; Doe v. Clarke (1809), Peake, Add. Cas. 239; Cox v. Knight (1856), 18 C. B. 645.

⁽o) Gregory v. Doidge (1826), 3 Bing. 474, 475; Claridge v. Mackenzie (1842), 4 M. & Gr. 143, 155. See Brook v. Biggs (1836), 2 Bing. N. C. 572.

⁽p) Fenner v. Duplock (1824), 2 Bing. 10, 11. See 3 Bing. 475.

rent being made, that the title of the mortgagees had come to an end (q).

Payment of rent by a tenant to an authorized agent, who does not disclose his principal's name at the time, but pays over the rent to his principal, is evidence as against the tenant of the principal's title (r).

(10) REMEDIES FOR RECOVERY OF RENT.

(10) ItEMBDIES FOR IEDOCVERT OF IEDAL.	2402
(i) Distress	PAGE . 245
(a) Requisites to	247
Certain and proper rent	. 247
Rent in arrear	. 249
Reversion in person distraining	. 250
Goods liable to distress	. 257
1. Goods absolutely privileged	. 257
II. Goods conditionally privileged	. 266
(b) Where distress must be made	. 270
Fraudulent removal	. 271
(c) When distress must be made	. 276
(d) Amount for which distress may be made	. 278
(e) Mode of making	. 280
Employment of bailiff	. 280
Bailiff's indemnity	. 282
Demand of rent	. 283
Entry	. 283
Seizure	. 285
Excessive distress	. 286
Impounding	. 289
Abandonment of distress	, 293
Pound-breach	. 294
(f) Requisites to sale under distress	. 295
Inventory and notice	. 296
Effect of tender	. 298
Appraisement	. 300
When now necessary	. 300
(g) Sale \ldots	. 301
(h) Costs of distress	. 306
(i) Remedies for illegal distresses	. 307
Rescue	. 308
Replevin	. 308
Action	. 313
Summary statutory remedies	. 314
(j) Remedy for irregular distresses	. 315
(ii) Remedy on Execution against Tenant	. 316
(iii) Remedy on Bankruptcy of Tenant	. 323
(iv) Remedy on Winding-up	. 326
(v) Remedy by Action	. 329
Statute of Limitations	. 331

Rent may be recovered by distress or by action. If the landlord distrains, the debt due from the tenant is suspended until

⁽c. A.), [1903] 2 K. B. 304, at pp. 312, (c. A.) approving Fenner v. Duplock, 5 Ex. 50.

the result of the distress is ascertained (s). Hence the landlord cannot sue for the rent so long as he continues to hold goods seized under a distress, notwithstanding that their value may be insufficient to satisfy the rent (t). If, on the other hand, he sues for rent in arrear and recovers judgment, the remedy by distress is extinguished, since the debt for rent is merged in the judgment (u).

(i) Distress.

As an incident to the relation of landlord and tenant, the Right of landlord has, at common law, a power to distrain for arrears of rent upon all goods found upon the demised premises (v), whether the goods of the tenant or of a stranger (x), except goods specially privileged from distress. The landlord's right to distrain is founded on the principle that the rent reserved by his demise issues out of the land, and he distrains by taking possession, in the nature of a pledge, of goods and chattels found upon such land. In distressing, therefore, a landlord looks to the land demised, and to the goods and chattels found thereon (y). An assignee of the reversion, e.g. a mortgagee, is not barred from distraining by a parol agreement between the tenant and the assignor of which the assignee has no notice (z). But the landlord must, in general (a), exercise his right while the goods are upon the premises, and he is not protected by the appointment of a receiver (b).

The landlord cannot distrain upon goods of a stranger when Goods of a they have been brought upon the premises by the landlord himself without the owner's authority (c); or upon goods received by the tenant in the course of his business if he has been authorized to carry on the business in his landlord's name (d).

stranger.

(s) See Edwards v. Kelly (1817), 6 M. & S. p. 209; Lehain v. Philpott (1875), L.R. 10 Ex. 242, p. 246.

(t) Lehain v. Philpott, supra.

(u) Chancellor v. Webster (1893), 9 T. L. R. 568; Potter v. Bradley (1894), 10 T. L. R. 445.

(v) The landlord may distrain notwithstanding that the lessee has been evicted by a stranger: Humphry v. Damion (1613), Cro. Jac. 300.

(x) Hence, upon a sale of the tenant's goods by auction, the liability to distress passes with the goods, and the auctioneer is not justified in paying the rent out of

the proceeds of sale in order to avert a threatened distress: Sweeting v. Turner (1872), L. B. 7 Q. B. 310.

(y) Per Farwell, J., in British Mutoscope, &c., ('o. v. Homer, [1901] 1 Ch. at pp. 674, 675.

(z) Carter v. Salmon (1880), 43

L. T. 490.

(a) Infra, p. 270.

(b) See Re Setton (1863), 32 L. J. Ch. 437; Re Suffield and Watts (1888), 20 Q. B. D. 693.

(c) Paton v. Carter (1883), C. & E. 183.

(d) Miles v. Furber (1873), L. R. 8 Q. B. 77, 82.

A distress upon the goods of a stranger in operation at the time of the tenant's bankruptcy prevents them from being in the order and disposition of the bankrupt (e). A stranger whose goods are seized is entitled to redeem them and to be reimbursed by the lessee the money paid to redeem them, or, if they are sold, he can recover the value from the lessee (f); and where, after two out of three co-lessees had assigned their interests to the third, who was a coach-maker, a stranger's carriage was distrained on the demised premises for rent, and he paid the rent in order to redeem it, it was held that he could maintain an action for reimbursement against all the original lessees, they being all bound by covenant with the landlord to pay the rent (g).

Suspension of right of distress.

Where the lessee contracts to purchase the reversion, the lease is not thereby determined, but the landlord's right to distress is in equity suspended pending completion, provided the contract continues and is enforceable by an action for specific performance. If, however, the contract is released or abandoned, or the lessee by unreasonable delay loses his right to specific performance, the lessor may distrain (h).

Postponement of right of distress.

An express agreement by the landlord to postpone his right of distress is valid and binding on him (i). Hence, if a lessee agrees not to distrain on an underlessee unless the lessee shall have previously paid the rent due from himself to the superior landlord, and shall produce to the underlessee the receipt for such rent, the lessee cannot distrain until he has fulfilled these conditions (i).

Relief against distress.

Equity will relieve against distress in a case where it is fraudulent on the part of the landlord to insist on this remedy (k); and if the landlord's right to the rent is in dispute, an injunction against distraining may be granted, though the Court will probably only do this on terms of the amount of the rent being brought into Court (l).

(e) Sucker v. Chidley (1865), 13 W. B. 690.

(f) Edmunds ∇ . Wallingford (1885),

14 Q. B. D. 811, p. 814.

(q) Exall v. Partridge (1799), 8 T. R. 308; distinguish England v. Marsden (1866), L. R. 1 C. P. 529, where the stranger allowed the goods to remain on the premises for his own benefit, and his payment was not "compulsory."

(h) Ellis v. Wright (1897), 76 L. T. 522.

(i) Giles v. Spencer (1857), 3 C. B. N. S. 244; infra, p. 278.

(k) Fowkes v. Joyce (1689), 2 Vern. 129. See Horsford v. Webster (1835), 1 Cr. M. & R. 696.

(l) Judicature Act, 1873, s. 25, sub-s. (8); Shaw v. E. of Jersey (1879), 4 C. P. D. 359. See Sanzster v. Foster (1841), Cr. & Ph. 302.

(a) REQUISITES TO DISTRESS.

Unless a distress is made under the terms of a special power (m), the following circumstances must exist to enable the landlord to avail himself of that remedy:—(1) There must be a certain and proper rent; (2) the rent must be in arrear; (3) there must be a reversion in the person distraining; (4) there must be goods on the demised premises liable to be distrained.

A Certain and Proper Rent.

The rent for which the distress is made must be rent properly so called—that is to say, rent due in respect of an actual tenancy of corporeal hereditaments (n).

Existing

Hence there is no distress for rent due under a mere licence (o), and formerly there was no distress for rent due under an agreement for a lease, even though possession had been taken, unless a tenancy had been created by payment of rent or otherwise (p). To obviate the difficulty a special power of distress till the execution of the lease was sometimes inserted (q). But now, or agreement where possession has been given and taken under an agreement for a lease which is specifically enforceable by either party, the formance. rent can be distrained for although no legal tenancy has been created (r). It is no objection to the power of distress that the tenancy on which the rent is reserved is a tenancy at will (s).

capable of specific per-

The landlord cannot distrain after he has treated the occupier as a trespasser (t), or after a notice to quit has become effectual. And a distress cannot be made on a tenant holding over as tenant at sufferance unless a new tenancy can be implied (u). For any subsequent occupation the landlord's remedy is by an action for use and occupation (x). If the lessor's title has

(m) *Infra*, p. 248.

(n) Supra, pp. 218—220. As to an acknowledgment of an antecedent tenancy showing authority to distrain, see per Alderson, B., in Eagleton v. Gutteridge (1843), 12 L. J. Ex. p. 361; Gladman v. Plumer (1845), 15 L. J. Q. B. 79; and as to distress by a vendor to whom the purchaser has become tenant to secure the carrying out of the agreement, see Yeoman v. Ellison (1867), L. R. 2 C. P. 681.

(v) Ward v. Day (1863), 4 B. & S. p. 358; Rendell v. Roman (1893), 9 T. L. B. 192.

(p) Heyan v. Johnson (1809), 2

Taunt. 148.

(q) Bicknell v. Hood (1839), 5 M. & W. 104. See Anderson v. Midland Ry. Co. (1861), 3 E. & E. 614.

(r) See Walsh v. Lonsdale (1882), 21 Ch. D. 9; discussed supra, p. 81.

(s) See Morton v. Woods (1868), 37 L. J. Q. B., per Blackburn, J., p. 247.

(t) Bridges v. Smyth (1829), 5

Bing. 410.

(u) Jenner v. Clegg (1832), 1Moo. & R. 213, 218; Williams v. Stiven (1846), 9 Q. B. 14.

(x) Alford v. Vickery (1842), Car. & M. 280.

expired, he cannot enforce the continuance of the tenancy by distress, if the tenant refuses to recognize him as landlord, even though the tenant has already paid rent under a threat of distress (y); and, à fortiori, where the tenant has been evicted by title paramount, and has retaken the premises from the evictor (z).

Rent must be ascertained or ascertainable.

Moreover, before the landlord takes into his hand the speedy remedy of distress, he must see that the amount of rent to be demanded has been settled with precision (a). He has no right to distrain, unless a fixed rent has been expressly or impliedly (b) agreed upon (c); if there is no fixed rent, the law gives him a remedy by the action for use and occupation (d). A rent which, though of fluctuating amount, is ascertainable with certainty, may be distrained for (e); as, for instance, a rent of so much per cubic yard for marl got, and so much per thousand for bricks made (f). A distress may be made for an increased rent of so much per acre for every acre of land converted into tillage (g); or for a monthly rent due under an attornment clause in a building society mortgage, consisting of the monthly amount of subscriptions, interest, and fines (h). And a rent for a portion of a room in a factory, with steam power, is not rendered uncertain by reason of a provision for deductions in respect of a possible failure in the supply of steam power (i). Where rent is apportionable, the apportioned part may be distrained for (k).

Express power of distress.

By express agreement, however, a power may be conferred to distrain for payments which are not rent (l). Thus, a sum payable by way of punishment for not spending the produce on the land demised may be made recoverable by distress to be made in the same way as a distress for rent in arrear (l). And

(y) Burne v. Richardson (1813), 4 Taunt. 720.

(z) Hopcraft v. Keys (1833), 9 Bing. 613.

(a) Per Tindal, C.J., in Regnart v. Porter (1831), 7 Bing. at p. 454.

(b) See Knight v. Benett (1826), 3 Bing. 361.

(c) Watson v. Waud (1853), 8 Ex. 335. See Anderson v. Midland Ry. (o. (1861), 3 E. & E. 614.

(d) See judgment of Abbott, C.J., in Dunk v. Hunter (1822), 5 B. & Al. at p. 325. Double value cannot be recovered by distress: infra,

Chap. VII., Sect. 5 (2) (i).

(e) Co. Litt. 96 a.

(f) Daniel v. Gracie (1844), 6 Q. B. 145; Selby v. Greaves (1868). L. R. 3 C. P. pp. 602, 603.

(g) See Roulston v. ('larke (1795), 2 H. Bl. 563; supra, p. 227.

(h) Ex parte Voisey (1882), 21 Ch. D. 442.

(i) Selby v. Greaves (1868), L. R. 3 C. P. 594.

(k) Neale v. Mackenzie (1836), 1 M. & W. 758.

(l) Pollitt v. Forrest (1847), 11 Q. B. 949. such a power does not depend upon a legal tenancy. Thus, apart from the Bills of Sale Acts, a person, whether he is tenant or not, can give a power of distress over goods of his own, as, for instance, to secure interest for money lent (m), or the price of goods supplied (n). But in the absence of a tenancy such a power of distress is rendered impracticable by the Bills of Sale Acts, 1878 and 1882 (o). A power of distress not incident to a tenancy does not authorize distress against the goods of a stranger (p).

Rent in Arrear.

There can be no distress till the rent is in arrear, and rent Rent in is not in arrear until the day appointed for payment has elapsed (q); hence, no distress can be made until the day after the rent-day (q). Where by custom or express reservation rent is payable in advance (r), the landlord may distrain for it as soon as the half-year, or other period for which it is to be paid, has begun (s).

Ordinarily notice is not necessary before the distress is Notice before made (t). But it is otherwise in the case of a penal rent, or where the date of payment of rent is accelerated by the landlord. In the case of a penal rent, a tenant, not knowing whether his landlord will insist on the penal rent or no, is not bound to be ready to pay before notice (u). And where rent is payable quarterly, or half-quarterly if required, the landlord cannot, after receiving the rent quarterly, distrain without notice at the half-quarter (x). Where rent is payable in advance, if required, a demand for payment must be made before the landlord can distrain (y); but the demand may be made after the day on

⁽m) Chapman v. Beecham (1842), 3 Q. B. 723.

^{(&}lt;u>n</u>) Iredale v. Kendall (1878), 40 L. T. 362.

⁽v) Pulbrook v. Ashby (1887), 56 L. J. Q. B. 376; Stevens v. Marston (1890), 60 L. J. Q. B. 192. As to attornment clauses in mortgage deeds, see supra, p. 83.

⁽p) Gibbs v. Cruikshank (1873), 28 L. T. 104.

⁽q) Dibble v. Bowater (1853), 2 E. & B. 564, 568. See 2 Wms. Saund.

⁽r) Supra, pp. 151, 220.

⁽s) Buckley v. Taylor (1788), 2 T. R. 600; Harrison v. Barry (1819), 7 Price, 690, 698; Lee v. Smith (1854), 9 Ex. 662, 665; Walsh v. Lonsdale (1882), 21 Ch. D. 9.

⁽t) Gillingham v. Gwyer (1867), 16 L. T. 640.

⁽u) Per Alderson, J., in Mallam v. Arden (1833), 10 Bing. p. 300.

⁽x) Mallam v. Arden, supra; see Clowes v. Hughes (1870), L. R. 5 Ex. 160.

⁽y) Clarke v. Holford (1848), 2 C. & K. 540; Williams v. Holmes (1853), 8 Ex. 861, p. 863.

which the rent thereby becomes due (z). If the landlord's rights are in peril, he may distrain immediately after demand (a).

Reversion in Person Distraining.

Reversion necessary.

In general the person who distrains, or on whose behalf the distress is made, must possess a reversion (b); hence the lessor cannot distrain after he has assigned his reversion for arrears of rent due before the assignment. It follows that a mortgagee who has assigned his mortgage cannot distrain for interest reserved by way of rent due before the assignment (c). On the other hand, a parol assignment, since it is inoperative to pass the reversion, confers no power of distress on the assignee (d). By granting a lease to commence at the expiration of an existing lease, the lessor does not part with the reversion so as to disentitle him to distrain (c).

Since distress depends upon the existence of a reversion, rent reserved on the assignment of a lease cannot be distrained for (f).

Surrender of mesne lease.

The remedy of a lessee, who surrenders his lease in order to be renewed, by distress for rent due from his underlessee remains the same as if the original lease had been kept on foot (g); but the remedy of the chief landlord, by distress upon the premises comprised in the underlease, for the rent reserved in the new head lease is restricted to the amount of rent reserved by the original head lease out of which such underlease was derived (g).

In other cases of surrender, or in case of merger, of the reversion expectant on a lease, the owner of the next vested estate is to be deemed the reversioner expectant on the lease for the purpose of distress (h).

Surety for rent.

Under sect. 5 of the Mercantile Law Amendment Act, 1856 (i), a surety who pays a debt for the principal debtor is entitled to

(z) Witty v. Williams (1864), 12 W. R. 755; supra, p. 221.

(a) London and Westm. Loan, &c., Co. v. L. & N. W. Ry. Co., [1893] 2 Q. B. 49.

(b) See cases cited supra in notes (l), (m), (n), p. 220; and Pascoe v. Pascoe (1837), 3 Bing. N. C. 898. Cf. Hazeldine v. Heaton (1883), C. & E. 40; and consider Serjeant v. Nash, Field & Co., [1903] 2 K. B. 304, 312.

(c) Brown v. Metrop. Counties, &c.,

Society (1859), 1 E. & E. 832.

(d) Brawley v. Wade (1824), M'Clel. 664.

(e) Smith v. Day (1837), 2 M. & W. 684.

(f) Supra, p. 220.

(g) The Landlord and Tenant Act, 1730 (4 Geo. 2, c. 28), s. 6; infra, p. 493.

(h) The Real Property Act, 1845 (8 & 9 Vict. c. 106), s. 9; infra, p. 493. (i) 19 & 20 Vict. c. 97. of rent is not entitled to distrain (k).

RENT.

estoppel.

251

But the reversion, to support a distress, need not be an actual Reversion by reversion; it is sufficient if it be a reversion by estoppel (l), and if one party is let into possession by the other under an agreement that the one shall be tenant and the other landlord, as between themselves each party is estopped from denying the other's title (m). Accordingly, in a case decided in the Exchequer Chamber in the year 1869, it was held that where a mortgagor, who had executed first a legal mortgage in fee and then a second mortgage, had attorned to the second mortgagee and occupied as tenant to him, a distress for rent due under the tenancy created by that attornment might be made by the second mortgagee, although he had no legal reversion, and although it appeared on the face of his deed that he had no such reversion (n). And in a subsequent case, where the first and second mortgages were executed in the years 1877 and 1878, it was held by the Court of Appeal to make no difference that the mortgagor had previously attorned to the first mortgagee, and that the first mortgage was still on foot (o). But, as has already been noticed (p), the effect of the Bills of Sale Acts, 1878 and 1882, has been to render attornment clauses in mortgages practically useless for the purpose of giving a right of distress.

In the case of a lease made before a mortgage, the mortgagor's Distress for title to distrain for the rent ceases on the assignment of the reversion by the mortgage deed; but, if permitted by the mortgagee to continue in the receipt of the rent, the mortgagor is during such permission authorized præsumptione juris, if it should become necessary, to realize the rent by distress; and though the mortgagor may have to justify the distress as bailiff for the mortgagee, it is not necessary that the distress should be made in the mortgagee's name (q).

rent under lease before mortgage. Distress by mortgagor.

⁽k) Re Russell (1885), 29 Ch. D. 254. (1) See supra, p. 74; but consider Serjeant v. Nash, Field & Co., [1903] 2 K. B. 304.

⁽m) Judgment of Blackburn, J., in Morton v. Woods (1868), 37 L. J. Q. B. at p. 248. Distinguish Serjeant v. Nash, Field & Co., [1903] 2 K. B. 304.

⁽n) Morton v. Woods (1868), L. R.

³ Q. B. 658; aff. L. R. 4 Q. B. 293. (o) Ex parte Punnett (1880), 16 Сь. D. 226.

⁽p) Supra, p. 84. (q) Reece v. Strousberg (1885), 54 L. T. 133; Trent v. Hunt (1853), 9 Ex. 14; Snell v. Finch (1863), 13 C. B. N. S. 651. See per Erle, C.J., pp. 656, 657.

Distress by mortgagee.

The mortgagee as assignee of the reversion has the same rights under the lease as the mortgager had before the mortgage, and, after he has given notice of the mortgage to the lessee, he may distrain for rent in arrear at the time of the notice, and rent subsequently becoming due (r). And this result is not prevented by a change in the tenancy made by the mortgager after the mortgage, whereby the rent is increased, though probably the mortgagee could only distrain for the original rent, his remedy for the increased rent being by an action for use and occupation (s).

Distress for rent under lease after mortgage. Not under Conveyancing Act, 1881, s. 18.

The right of distress under a lease made by a mortgagor in possession after the date of the mortgage depends on whether the mortgage is subject to sect. 18 of the Conveyancing Act, 1881 (t), or not. In mortgages not subject to that section, the mortgagor may distrain in virtue of his reversion by estoppel (u); but he must bear in mind that compulsory payments previously made by his tenant to the mortgagee for interest due on the mortgage are equivalent to payment of so much rent (x). The mortgagee cannot distrain for rent due under a lease made by the mortgagor after the mortgage until a new tenancy has been expressly or impliedly created between the mortgagee and the tenant (y). Notice by the mortgagee to the tenant to pay the rent to him does not constitute a tenancy between the parties, so as to enable the mortgagee to distrain for rent accruing due after the notice (y).

Under Conveyancing Act, 1881, s. 18.

In the case of a mortgage which is subject to sect. 18 of the Conveyancing Act, 1881, the mortgager is entitled to distrain so long as the mortgagee does not interfere; but his right ceases when the mortgagee either appoints a receiver (z) or gives notice to the tenant to pay the rent to himself. In the latter case the mortgagee may distrain as owner of the reversion (a). It is, therefore, unnecessary for any fresh tenancy to be created.

Receiver.

A receiver appointed by mortgagor and mortgagee to receive the rents of the mortgaged property, and to use such remedies

- (r) Moss v. Gallimore (1779), 1 Dougl. 279; Royers v. Humphreys (1835), 4 A. & E. 299.
- (s) Burrows v. (Fradin (1843), 1 D. & L. 213.
 - (t) 44 & 45 Vict. c. 41.
- (u) Alchorne v. Gomme (1824), 2 Bing. 54.
 - (x) Supra, p. 234.

- (y) Evans v. Elliott (1838), 9 A. & E. 342; Rogers v. Humphreys (1835), 4 A. & E. 299; supra, p. 225.
- (z) Bayly v. Went (1884), 51 L. T. 764; Woolston v. Ross, [1900] 1 Ch. 788.
- (a) Conveyancing Act, 1881, s. 10; Municipal Building Society v. Smith (1888), 22 Q. B. D. 70.

by way of entry and distress as should be requisite, and to whom the mortgagor has attorned as tenant, may distrain on the goods belonging to the mortgagor on the mortgaged premises (b). A mere authority to tenants to pay rent to a person, whose receipt is to be their discharge, may perhaps authorize that person to demand, but not to distrain for the rent (c).

A receiver appointed by the mortgagee under the Conveyancing Receiver Act, 1881, has power to recover the rents of the property by distress, in the name either of the mortgager or of the mortgagee, to the full extent of the estate or interest which the mortgagor could dispose of (d). But, although such a receiver is deemed to be the agent of the mortgagor (e), the latter cannot, while the receivership is in force, himself distrain without the receiver's authority, even where the receiver has declined to distrain (f). It is also to be borne in mind that, if such a receiver distrains wrongfully, he may be sued for damages (g).

under Conveyancing Act, 1881.

Where a lease is taken from a receiver appointed by the Receiver Court (h), or where the tenant has attorned to such receiver (i), the receiver can distrain in his own name. But the attornment to the receiver does not enure for the benefit of the person ultimately found to be entitled to the legal estate (k). Where the receiver is not in the position of landlord, he must distrain in the name of the person who is legally entitled to the rent (l), and if there is any doubt as to who this person is, he may properly apply to the Court for an order to distrain, though ordinarily he can distrain without special order (m), at any rate if there is not more than a year's rent in arrear (n).

appointed by the Court.

- (b) Jolly v. Arbuthnot (1859), 4 De G. & J. 224.
- (c) Ward v. Shew (1833), 9 Bing. 608.
 - (d) Conveyancing Act, 1881, s. 24 (3).
- (e) Sect. 24 (2).
- (f) Woolston v. Ross, [1900] 1 Ch. 788, 791.
- (y) See Serjeant v. Nash, Field & Co., [1903] 2 K. B. 304, 316, where the solicitors to the mortgagees (a member of the firm being also one of the mortgugees), and also the receiver, appointed by the mortgagees, who had put in a distress at the request of the solicitors, were held liable in damages for having distrained at a time when, the relation of landlord and tenant having ceased
- to exist between the mortgagees and the occupier, there was no right to distrain.
- (h) Dancer ∇ . Hastings (1826), 4 Bing. 2.
- (i) Hughes v. Hughes (1790), 1 Ves. 161.
- (k) Evans v. Mathias (1857), 7 E. & B. 590.
- (l) See Re Powers (1890), 63 L. T. 626.
- (m) Per Lord Hardwicke in Pitt v. Snowden (1752), 3 Atk. 750; Bennett v. Robins (1832), 5 C. & P. 379; Brandon v. Brandon (1821), 5 Madd. 473. See Kerr on Receivers, 3rd ed. pp. 160—162.
- (n) See Fisher on Mortgages, 5th ed. 408. As to distress in the case of

Recovery of arrears due at death of reversioner. 3 & 4 Will. 4. c. 42, s. 37. Executors, &c., of landlord may disdue in his life. Sect. 38. Arrears may be distrained for within six end of lease.

Upon the death of the reversioner it was at common law impossible to recover arrears of rent by distress, but by statute the executors or administrators of any lessor or landlord may distrain upon lands demised for any term (o), or at will for the arrearages of rent due to such lessor or landlord in his lifetime, in like manner as such lessor or landlord might have done in his train for rent lifetime (p).

Such arrearages may be distrained for after the end or determination of such term or lease at will, in the same manner as if such term or lease had not been ended or determined, provided months after that such distress be made within the space of six calendar months after the determination of such term or lease, and during the continuance of the possession of the tenant from whom such arrears became due.

> An executor may distrain before probate for rent due to his testator (q).

Real representatives.

The real estate (r) of a deceased person now vests upon his death in his personal representatives (s), and, while it remains so vested, they have power to distrain for rent accruing due. In the case of an intestacy, it may be that the legal estate vests in the heir-at-law pending the grant of administration: but whether so as to entitle him to distrain, quære.

Married woman.

Inasmuch as, by virtue of the Married Women's Property Act, 1882 (t), a married woman is capable of acquiring and holding any real or personal property as her separate property in the same manner as if she were a feme sole (u), a married woman who was married after the 31st December, 1882, may distrain in her own name for rent in arrear under a lease the reversion on which belongs to her (x); and a married woman who was married before the 1st January, 1883, may distrain in her own name for rent in

Crown leases, see 10 Geo. 4, c. 50, s. 90.

(o) As to the recovery of rents created for a freehold estate, see 32 Hen. 8, c. 37, s. 1; Prescott v. Boucher (1832), 3 B. & Ad. 849; Jones v. Jones (1832), ib. 967; Appleton v. Doily (1609), Yelv. 135; Co. Litt. 162 b; 1 Williams on Exors. 9th ed. 799.

(p) By 11 Geo. 2, c. 19, s. 15, the executors or administrators of a tenant for life can by action recover against the under-tenants a part, apportioned to the death of the

tenant for life, of the rent reserved on a lease determining on such death. See 14 & 15 Vict. c. 25, s. 1; infra, Chap. VII., Sect. 2 (2).

(q) Whitehead v. Taylor (1839), 10 A. & E. 210; 1 Williams on Exors. 9th ed. 250.

(r) See supra, note (g), p. 61.

(s) See supra, p. 62, and the trestises referred to in the notes there.

(t) 45 & 46 Vict. c. 75.

(u) Sect. 1 (1).

(x) Sect. 2.

arrear under a lease of property, her title to which has accrued after that date and the reversion upon which belongs to her (y). But the Act does not interfere with settlements (z), and hence, in the case of property settled either before or after the marriage, the powers of the married woman will depend on the terms of the settlement. If she takes a legal estate in the reversion, she will have power to distrain; otherwise not.

With regard to freehold and copyhold property acquired before Distress by the 31st December, 1882, by a woman married before that date, the husband may distrain for arrears of rent accruing during the life of the wife on leases of such property; and he may also distrain for arrears of rent due on subleases of leasehold property of the wife (a).

husband.

If the husband is tenant by the curtesy, he may in virtue of that estate distrain for rent accruing due after the termination of the coverture. If he does not become tenant by the curtesy, his interest ceases on the death of his wife (b), and on principle he cannot distrain for future arrears; but it has been said that a man who has made a lease for years reserving rent of lands of which he is seised in right of his wife, although on her death he does not become tenant by the curtesy, but his estate is determined, may nevertheless distrain for the rent until her heir has The husband, if he takes out administration, can entered (c). distrain for arrears of rent under 3 & 4 Will. 4, c. 42, s. 37, as administrator to his wife.

A tenant from year to year, underletting from year to year, has Tenant from a sufficient reversion to support a distress (d).

year to year.

One of several joint tenants or coparceners may distrain for Joint tenants. the whole rent without any express authority from the rest (e); but he must justify in his own right and as bailiff to the rest (e).

It is incident to this species of property that a severance of the reversion destroys the right to distrain for arrears of a single

(y) Sect. 5. (z) Sect. 19.

(a) Bullen on Distress, 2nd ed. p. 57.

(c) Bac. Abr. (C. 1) 650; Dixon v.

Harrison (1670), Vaugh. 46.

(d) Curtis v. Wheeler (1830), Moo. & M. 493. See Oxley v. James (1844), 13 M. & W. 209, p. 214.

(e) Pullen v. Palmer (1697), 3 Salk. 207; Leigh v. Shepherd (1821), 2 Br. & B. 465; Robinson v. Hofman (1828), 4 Bing. 562. See, too, Stedman v. Bates (1696), 1 Salk. 390.

⁽b) Blake v. Foster (1800), 8 T. R. 487; judgment of Bayley, J., in Hill v. Saunders (1825), 4 B. & C. at p. 535. See Howe v. Scarrott (1859), 4 H. & N. 723.

rent then due. Hence, if joint tenants have demised at a single rent, and a severance takes place by a conveyance of the shares of some of the joint tenants, no distress can be made for arrears of such rent due before the severance (f). But a surviving joint tenant may distrain for arrears of rent accrued due before the death of his co-tenant (g).

Tenants in common.

Tenants in common are entitled to separate distresses for their several shares of the rent reserved upon a lease granted by all of them (h). It has been said that they may all join in one distress (i), but under the former practice they had to avow separately (i). As in the case of joint tenants (k), one tenant in common may distrain upon another who holds by lease under him (l), and the distress may be taken on any part of the land (m). But rent due from one co-owner to another cannot be got by distress on the goods of a third co-owner, or on those of a stranger placed on the land by the permission of a co-owner (n).

Coparceners.

One coparcener may, before partition, distrain alone for the whole rent without any express authority from her sister (o), but she must justify in her own right and also as bailiff to her sister (p). The same rules apply to co-heirs in gavelkind, who are coparceners by custom (p).

Churchwardens. When land is vested in churchwardens and overseers under 59 Geo. 3, c. 12, s. 17, it is competent for any one churchwarden or overseer to make a distress or order one to be made without calling a meeting of all and having the authority of a majority of those present (q).

Tenant by elegit.

A tenant of a rent-service by elegit is entitled to distrain, and that without any attornment by the lessee (r). Attornment is not necessary where the reversion is assigned by operation of law (s).

- (f) Staveley v. Allcock (1851), 16 Q. B. 636.
 - (g) 2 Roll. Abr. 86.
- (h) Whitley v. Roberts (1825), M'Clel. & Y. 107.
- (i) Bullen on Distress, 2nd ed. 50; Litt. sect. 317; Harrison v. Barnby (1793), 5 T. R. 246; Pullen v. Palmer (1697), 3 Salk. 207.
 - (k) Supra, p. 63.
- (l) Brennan v. Flood (1854), 4 Ir. C. L. R. 332.
- (m) Snelgar ∇ . Henston (1621), Cro. Jac. 611.
 - (n) Kempe v. Cory (1691), 2 Ventr.

- 227, 283. See Viner's Abridg. "Distress," I. 25—27; Re Potter (1874), L. B. 18 Eq. 381.
- (v) Leigh v. Shepherd (1821), 2 Br. & B. 465, 470.
- (p) Stedman v. Bates (1695), l Ld. Raym. 64; Puge v. Stedman (1695), Carth. 364. See Decharmes v. Horwood (1834), 10 Bing. p. 529.
- (q) Gouldsworth v. Knights (1843). 11 M. & W. 337, p. 342.
- (7) Bullen on Distress, 2nd ed. 76. (8) Lloyd v. Davies (1848), 2 Ex. 103.

Goods Liable to be Distrained.

Under the power of distress incident to the relation of landlord General rule and tenant the landlord may, speaking generally, distrain for rent at common law. all movable chattels which are upon the demised premises (t) at the time when the distress is made. Whether such goods are the property of the tenant or of a stranger is perfectly immaterial, provided they are on the premises, and are not privileged from distress (u). But as no authority can be given by an express power of distress granted by the tenant alone to seize the goods of third persons, a landlord who distrains under such an express power must restrict his seizure to the tenant's own goods (x).

Certain classes of goods, however, are privileged from dis- Exemptions tress, and such privilege may be either absolute or conditional. In the latter case the goods are only privileged in the event of there being other goods on the premises sufficient to answer the distress.

from distress

I. GOODS ABSOLUTELY PRIVILEGED.

Things annexed to the freehold cannot be distrained (y), 1. Fixtures. because they cannot be taken away without doing damage to the freehold (z), and also because they cannot be restored in their original plight (a). The latter reason is founded upon the circumstance that goods distrained were formerly merely taken by way of pledge and could not be sold. Things annexed to the freehold include tenant's fixtures, such as kitchen ranges, stoves, coppers, grates, &c. (b); also trees growing in a nurseryman's grounds (c).

The temporary removal of fixtures out of their proper place, for repairs, does not deprive them of this privilege (d).

Keys and title-deeds are by construction of law part of the Keys and freehold, and cannot be distrained (e).

title-deeds.

(t) For cases where chattels may be distrained off the demised premises, see infra, p. 271.

(u) Per Buller, J., in Gorton v. Falkner (1792), 4 T. R. at p. 568. See Muspratt v. Gregory (1838), 1 M. & W. 633, 3 M. & W. 677; Cramer v. Mott (1870), L. R. 5 Q. B. 357.

(x) Supra, p. 249.

(y) Co. Litt. 47 b; Gorton v. Falkner (1792), 4 T. R. at p. 569.

(z) Simpson v. Hartopp (1745), Willes, 512; 1 Sm. L. C. 11th ed. 437.

(a) Darby v. Harris (1841), 1 Q. B., L.T.

per Patteson, J., p. 898. See Pitt v. Shew (1821), 4 B. & A. 206.

(b) Darby v. Harris (1841), 1 Q. B. 895. And as to fixtures, see infra, Chap. VII.; Hellawell v. Eastwood (1851), 6 Ex. 295; Holland v. Hodgson (1872), L. R. 7 C. P. 328.

(c) Clark v. Gaskarth (1819), 8 Taunt. 431; Clark v. Calvert (1819), 3 Moo. 96.

(d) See judgment in Gorton v. Falkner (1792), 4 T. R. at p. 567.

(e) See Hellawell v. Eastwood (1851), 6 Ex. at pp. 306, 311; Liford's Case (1615), 11 Rep. 50 b.

2. Goods sent to the tenant in the way of trade.

Things delivered to a person exercising a public trade, to be carried, wrought, worked up, or managed in the way of his trade These are privileged for the sake of trade and commerce, which could not be carried on if such things under these circumstances could be distrained for rent due from the person in whose custody they are (f). The word "public" in this connection refers to every trade or employ carried on generally for the benefit of any persons who choose to avail themselves of it, as distinguished from a special employment by one or particular The trade need not be public in the sense that all individuals. the Queen's subjects have a right to insist on the trader accepting their goods (g). But an artist to whom a picture is delivered to alter does not "manage" it as a public trader (h).

Under this head are included corn-sent to a miller to be ground (i); a horse sent to a farrier to be shod (k); materials sent to a manufacturer to be worked up (l), including the case of material delivered to a weaver to be manufactured at his own home (m); beasts sent to a butcher to be slaughtered (n); goods deposited for the purpose of sale with a factor (o), commission agent (p) or auctioneer (q); or placed for safe custody in the warehouse of a wharfinger (r); or pledged with a pawnbroker (s); also the goods of guests brought into an inn (though not horses placed in a stable which is let by the tenant of the stable to an innkeeper (t)), and goods delivered to a carrier to be conveyed by him to some place, whether he is strictly a common carrier or no, provided he carries the goods of all persons indifferently (u).

(f) Simpson v. Hartopp (1745), See judgment of Willes, 512. Erle, C.J., in Swire v. Leach (1865), 34 L. J. C. P. at p. 151; Gisbourn v. Hurst (1710), 1 Salk. 249.

(g) Muspratt v. Gregory (1836), 1 M. & W., per Parke, B., at p. 653. See Gibson v. Ireson (1842), 3 Q. B. pp. 44, 46; Tapling v. Weston (1883), C. & E. 99.

(h) Von Knoop v. Moss (1891), 7 T. L. R. 500.

(i) Co. Litt. 47 a.

(k) Year Book, 22 Ed. 4, fol. 49 b.

(1) Gibson v. Ireson (1842), 3 Q. B. 39; Read v. Burley (1597), Cro. Eliz. 549.

(m) Wood v. Clarke (1831), 1 Cr. & J. 484.

(n) Brown \forall . Shevill (1834), 2

A. & E. 138.

(o) Gilman v. Elton (1821), 3 Br. & B. 75; Mathias v. Mesnard (1826), 2 C. & P. 353.

(p) Findon v. M'Laren (1845), 6 Q. B. 891.

(q) Adams v. Grane (1833), 1 Cr. & M. 380.

(r) Thompson v. Mashiter (1823), I Bing. 283.

(8) Swire v. Leach (1865), 18 C. B. N. S. 479.

(t) Crosier v. Tomkinson (1759), 2 Ld. Ken. 439. See argument in Francis v. Wyatt (1764), 3 Burr. p. 1500; and cf. Fowkes v. Joyce (1689), 3 Lev. 260; 2 Vern. 129.

(u) Gisbourn v. Hurst (1710), I

Salk. 249.

auctioneers.

In the case of a factor, it makes no difference whether the goods are deposited in his own warehouse or, if he has not got one, in the warehouse of another (x). Goods delivered to an auctioneer, it has been held, are privileged if they are in a yard attached to the auctioneer's premises (y), and even away from his premises entirely, as in a place of sale hired by the auctioneer for the occasion (z) or taken by an act of trespass (a). Perhaps the latter case goes too far, and at any rate the auctioneer must be in occupation of the place where he sells; there is no privilege for the goods of the tenant sold by the auctioneer on the tenant's premises, or for goods sent to such a sale by a stranger (b).

On the other hand, goods placed in the hands of the tenant, merely with the intent that they shall remain on the premises, are not privileged from distress (c). Hence, brewers' casks sent to a public-house, and left with the publican till they are empty, may be distrained by the owner of the public-house (d). Where salt works were let on lease, and a boat belonging to a purchaser of salt was left in the custody of the lessees in a canal on the premises, to wait for a load of salt, it was held that it was not delivered to the lessees in the way of their trade and was not privileged (e).

It was held in Ex parte Russell(f) that wine sent to the ware- Wine sent to house of a wine-warehouseman to be matured, is liable to be distrained for rent due to the landlord of the premises where it is deposited, though not wine sent to be bottled and to be returned by a specified day. But it would seem that, if it was the business of the warehouseman to take in wine to be warehoused, the former part of the decision was wrong. In the similar case of furniture sent to a depository, the privilege exists (g). of distress by which one man's goods are made liable for another's debts is not one which should be carried beyond the

warehouse.

⁽x) Mathias v. Mesnard (1826), 2 C. & P. 353.

⁽y) Williams v. Holmes (1853), 8 Ex. 861.

⁽²⁾ See Adams v. (Irane (1833), 1 Cr. & M. 380.

⁽a) Brown v. Arundell (1850), 10 C. B. 54.

⁽b) Lyons v. Elliott (1876), 1 Q. B. D. 210; though in such a case the possession of the goods is in the auctioneer: Williams v. Millington

^{(1788), 1} H. Bl. 81. See Davis v. Artingstall (1880), 49 L. J. Ch. 609.

⁽c) See judgment of Wilde, B., in Parsons v. Gingell (1847), 4 C. B. at p. 558.

⁽d) Joule v. Jackson (1841), 7 M. & W. 450.

⁽e) Muspratt ∇ . Gregory (1836), 1 M. & W. 633; 3 ib. 677.

⁽f) (1870), 18 W. R. 753. (g) Miles v. Furber (1873), L. R. 8 Q. B. 77.

limits to which it has already been confined (h). So the decision that carriages and horses standing at livery may be distrained by the landlord for rent due by the livery stable-keeper (i) would probably now be followed, if at all, with reluctance.

The privilege depends on delivery by owner of goods.

For goods to be privileged under this head they must be actually delivered to the tenant by or on behalf of the person for whom they are to be manufactured or otherwise dealt with. Hence a ship built by a shipbuilder to the order of a purchaser, the materials being procured by the shipbuilder, is not privileged, notwithstanding that the purchaser has duly paid the instalments of purchase-money (k).

Cattle in or on the way to market.

The necessities of commerce account also for the protection of cattle in (l) or going to a fair or market (m). If the distance is great enough to require a night's rest, they cannot be distrained by the landlord of a field into which they are put to graze for the night (m).

3. Things which cannot be restored.

Nothing may be distrained for rent which cannot be rendered again in as good plight as it was in at the time when the distress was taken (n). The exemption applies to perishable goods, such as milk or meat; and to things which cannot be recovered, as loose money (o). But money in a sealed bag may be distrained (p).

Growing corn and corn in sheaves, &c. Distress now permitted by statute. Upon the same principle, growing corn and corn in sheaves were formerly privileged from distress (q); but these exemptions have been abolished by statute. By 11 Geo. 2, c. 19, s. 8, it is made lawful for every landlord, or his steward, bailiff, receiver, or other person empowered by him, to seize all sorts of corn and grass, hops, roots, fruits, pulse, or other product whatsoever, growing on any part of the estates demised, as a distress for

(h) Per Archibald, J., in Miles v. Furber, supra, at p. 83.

(i) Francis v. Wyatt (1764), 1 W. Bl. 483, 3 Burr. 1498; Parsons v. Gingell (1847), 4 C. B. 545.

(k) Clarke v. Millwall Dock Co.

(1886), 17 Q. B. D. 494.

(l) Co. Litt. 47 a.

(m) Tate v. Gleed (1784), 2 Wms.
Saund. ed. 1871, 675, note (x);
Nugent v. Kirwan (1838), 1 Jebb &
Sy. 97; Muspratt v. (iregory (1836),
1 M. & W., per Alderson, B., p. 647;
Lyons v. Elliott (1876), 1 Q. B. D.

p. 214. The contrary decision in Fowkes v. Joyce (1689), 3 Lev. 260, is not now law. See 2 Vern. 129.

(n) Co. Litt. 47 a; Darby v. Harris (1841), 1 Q. B. p. 898, per Denman, C.J.

(o) Morley v. Pincomb (1848), 2 Ex. 101.

(γ) Bac. Abr. "Distress" (B.), p. 697.

(q) Co. Litt. 47 a; Wilson v. Ducket (1676), 2 Mod. 61; Simpson v. Hartopp (1745), Willes, 512.

arrears of rent (r). And by 2 Will. & M. sess. 1, c. 5, s. 3, it is lawful for any person having rent arrear, and due upon any demise, to seize and secure any sheaves or cocks of corn, or corn loose, or in the straw (s), or hay lying or being in any barn or granary, or upon any hovel, stack or rick, or otherwise upon any part of the land or ground charged with such rent (t).

The former statute does not extend to trees and shrubs growing in a nurseryman's ground, but is confined to products of a similar nature to those specified in the section—that is, to produce which ripens and which has to be cut, gathered, made and laid up when ripe (u).

Things in actual use are privileged on the ground of the 4. Things in breach of the peace which might result from an attempt to distrain them (x). Thus the exemption applies to a horse, while it is drawing a cart (y) or being ridden (z); tools, while a man is working with them (x); and, it seems, wearing apparel, while in actual use. But clothes not being worn may be distrained (a). Such actual use must be shown as to make it appear probable that a distress would have led to a breach of the peace (b).

Animals feræ naturæ and other things in which there is no 5. Wild valuable property cannot be distrained (c). Under this head dogs have been said to be included (c), but, if such was ever the law, it has long been altered (d). Deer in an inclosed park may be distrained (d), and so, it seems, may tame deer in any inclosed ground, though it may not be strictly a park (e).

animals.

- (r) See infra, p. 291, as to the (x) Simpson v. Hartopp, supra. impounding of these crops. As to the effect with respect to growing crops of a power to distrain for arrears of an annuity charged on land in the same manner as a lessor can distrain for rent, see Miller v. Green (1831), 2 Tyr. 1.
- (s) Whether threshed or not: Belasyse v. Burbridge (1695), 1 Lutw. 213.
- (t) See infra, p. 291. This section applies to a power of distress for a rent seck under 4 Geo. 2, c. 28, s. 5: Johnson v. Faulkener (1842), 2 Q. B. 925.
- (u) Clark v. Gaskarth (1819), 8 Taunt. 431; Clark v. Calvert (1819), 3 Moo. 96.

- (y) Field v. Adames (1840), 12 A. & E. 649.
- (z) Storey ∇ . Robinson (1795), 6 T. R. 138, Co. Litt. 47 a; Read v. Burley (1597), Cro. Eliz. 594.
- (a) Baynes v. Smith (1794), 1 Esp. 206; Bisset v. Caldwell (1791), ib. note; Peake, N. P. C. 36.
- (b) Bunch v. Kensington (1841), 1 Q. B. 679.
 - (c) Co. Litt. 47 a.
- (d) See Davies v. Powell (1738), Willes, 46.
- (e) Ib.; and see Morgan v. E. of Abergavenny (1849), 8 C. B. 768; Ford v. Tynte (1862), 31 L. J. Ch. 177.

6. Things in the custody of the law.

Goods which have been distrained damage feasant, or are in the possession of the sheriff under an execution (f). And although a purchaser from the sheriff is ordinarily bound to remove the goods at once, if he wishes to avoid liability to distress (g), yet, if they are not capable of immediate removal, the goods in his hands are protected until they can properly be removed. In other words, goods are deemed to be still in the custody of the law until they are ready for removal, and the purchaser from the sheriff has had a reasonable time to remove them (h). Thus, in the case of growing crops, the crops were, prior to 14 & 15 Vict. c. 25, s. 2 (i), protected until they were ripe and the purchaser had had time to cut them and either carry them away or con-The circumstance that the purchaser of the sume them (k). crops had not entered into an agreement with the sheriff under 56 Geo. 3, c. 50, s. 3 (1), did not justify a distress by the landlord (m).

Receiver.

Goods in the possession of a receiver appointed by the Court may be distrained, but the leave of the Court should be obtained (n).

Sheriff must remain in possession.

To prevent distress it is necessary for the sheriff to continue in possession of the goods (o), and if the goods remain on the premises after a fictitious bill of sale under an execution they are liable to distress as before (p). Whether the sheriff by withdrawing from the premises has abandoned possession is a question of fact, and, it seems, he will be held to have abandoned possession if his withdrawal is for the convenience of the debtor (q). So if after an interpleader order the sheriff, with

- (f) Co. Litt. 47 a; Eaton v. Southby & B. 362; Hutt v. Morrell (1848), 11 (1738), Willes, 131; Wharton v. Naylor (1848), 12 Q. B. 673. As to the means to be adopted by the landlord where his tenant's goods are taken in execution, see infra, p. 316. If the proceedings in respect of which the execution is levied are annulled, money received by the sheriff's officer as the proceeds of a distress levied by him belongs to the landlord: St. John's Coll. v. Murcott (1797), 7 T. R. 259.
- (g) Re Benn Davis (1885), 55 L. J. Q. B. 217.
- (h) Wharton \mathbf{v} . Naylor (1848), 12 Q. B. 673.
 - (i) Infra, p. 263.
 - (k) Peacock v. Purvis (1820), 2 Br.

- Q. B., per Parke, B., p. 441; Wright v. Dewes (1834), 1 A. & E. 641.
 - (l) Infra, p. 374.

(m) Wright v. Dewes, supra.

(n) Re Sutton (1863), 32 L. J. Ch. 437; though in Walsh v. Walsh (1839), 1 Ir. Eq. R. 209, it was held that such leave was not necessary. And see Ex parte Till (1873), L. K. 16 Eq. 97; Engel v. S. Metrop. Brew. ing Co. (1891), W. N. p. 31.

(o) Blades v. Arundale (1813), 1

- M. & S. 711. (p) Smith v. Russell (1811), 3 Taunt. **400.**
- (q) Bagshawes, Lim. v. Deacon. [1898] 2 Q. B. 173.

mentioned."

the consent of the execution creditor and claimant, temporarily withdraws from possession, the goods are no longer in the custody of the law, and the landlord is entitled to distrain, though he knows that interpleader proceedings are pending (r). And similarly the right of distress is revived if the execution is waived (s).

Under the Sale of Farming Stock Act, 1816, s. 1 (t), the sheriff is prohibited in certain cases from selling produce for the purpose of being carried off the land; but the purchaser, being thus bound to keep the produce on the land, is at the same time protected against distress; the sixth section of the Act being as follows:---

Produce sold by sheriff subject to agreement to consume it on the land.

"In all cases where any purchaser of any crops or produce hereinbefore mentioned (t) shall have entered into any agreement with such sheriff or other officer, touching the use and expenditure thereof on lands let to farm, it shall not be lawful for the owner or landlord of such lands to distrain for rent on Landlord not any corn, hay, straw, or other produce thereof, which, at the produce so time of such sale and the execution of such agreement entered into under the provisions of this Act, shall have been severed from the soil and sold, subject to such agreement, by such sheriff or other officer; nor on any turnips, whether drawn or growing (u), if sold according to the provisions of this Act; nor on any horses, sheep or other cattle, nor on any beast whatsoever, nor on any waggons, carts, or other implements of husbandry, which any person shall employ, keep, or use on such lands, for the purpose of threshing out, carrying, or consuming any such corn, hay, straw, turnips, or other produce, under the provisions of the Act, and the agreement or agreements directed to be entered into between the sheriff or other officer and the purchaser of such crops and produce as hereinbefore are

56 Geo. 3, c. 50, s. 6.

to distrain on sold.

But growing crops sold under an execution are, in the absence Growing of sufficient distress of the goods of the tenant, liable to distress for rent accruing after the sale. Thus it is provided by the Landlord and Tenant Act, 1851, that in case all or any part of 14 & 15 Vict. the growing crops of the tenant of any farm or lands shall be c. 25, s. 2.

⁽r) Cropper v. Warner (1883), C. & (t) See infra, p. 373. E. 152. (u) But see 14 & 15 Vict. c. 25, s. 2, (*) Seven v. Mihill (1756), 1 Ld. infra, pp. 263, 264. Ken. 370.

Growing crops seized and sold under execution to be conditionally liable to distress for rent accruing after seizure and sale.

seized and sold by any sheriff or other officer by virtue of any writ of execution, such crops, so long as the same shall remain on the farm or lands, shall, in default of sufficient distress of the goods and chattels of the tenant, be liable to the rent which may accrue and become due to the landlord after any such seizure and sale, and to the remedies by distress for recovery of such rent: and that notwithstanding any bargain, sale, or assignment which may have been made or executed of such growing crops by any such sheriff or other officer.

Execution against Crown debtor.

An extent against a Crown debtor, although tested after a seizure has been made under a distress for rent, but before sale under the distress, will have priority (x).

7. Straying cattle.

In certain cases cattle straying on to the demised premises are exempt from distress. Where a stranger's cattle escape into the tenant's land by breaking fences in which there is no defect, or by breaking defective fences if the liability to repair them is not upon the owner or occupier, the cattle may be immediately distrained for rent, even before they are levant and couchant. But if the cattle come on the premises through defect of fences which the owner or occupier ought to repair, they cannot be distrained by the landlord for rent, though they are levant and couchant, unless the owner of the cattle, after notice that they are on the land, neglects or refuses to drive them away (y). The owner of the land should in such a case either repair the fences or put the tenant under covenant to do so. If he does not, and the fences are defective, he cannot take advantage of his own default and distrain.

8. Hired agricultural machinery and breeding stock.

In the case of a holding to which any of the Agricultural Holdings Acts, 1883 to 1900 (z), apply, (i) agricultural or other machinery which is the $bon\hat{a}$ fide property of a person other than the tenant of the holding, and is on the premises of such tenant under a $bon\hat{a}$ fide agreement with him for the hire or use thereof in the conduct of his business, and also (ii) live stock of all kinds which is the $bon\hat{a}$ fide property of a person other than the tenant, and is on the premises of the tenant solely for breeding purposes, may not be distrained for rent in arrear (a).

(x) R. v. Cotton (1741), Parker, 112; R. v. Southerby (1716), Bunbury, 5.

(y) Notes to Poole v. Longueville (1669), 2 Saund. 290, n. (7); Co. Litt. 47 b, note (301); Bullen on Distress, 121; 3 Black. Comm. 8. See Good-

win v. Cheveley (1859), 4 H. & N. 631; Kempe v. Crews (1697), 1 Ld. Raym. 167.

(z) See, as to these Acts, infra, Chap. VII., Sect. 4.

(a) Sect. 45 of the Agric. Hold. Act, 1883 (46 & 47 Vict. c. 61).

By 6 & 7 Vict. c. 40 (b), s. 18, no frame, loom, or machine 9. Frames, materials, tools, or apparatus entrusted for the purpose of being used or worked in the woollen, worsted, linen, cotton, flax, mohair or silk manufactures (c), or any work connected therewith, or any parts or processes thereof, whether such frame, &c., shall or shall not be rented or taken by hire, may be distrained for rent, unless the rent be due by the owner of the said frame, &c., or of any part thereof.

materials, &c., entrusted to workmen.

Not to be distrained except for rent due by owner.

If any landlord distrains any frame, &c., belonging to any Sect. 19. other person which has been entrusted for the purpose of being Remedy of used in any of the said manufactures, and refuses to restore frame, &c. possession of all such frames, &c., to the person entrusting the same, when demanded by him, any two or more justices of the peace may order the property to be forthwith restored.

The Law of Distress Amendment Act, 1888 (d), exempts from 10. Wearing distress any goods or chattels of the tenant or his family which would be protected from seizure in execution under sect. 96 of the County Courts Act, 1846, or any enactment amending or substituted for the same. The Act of 1846 was repealed by the County Courts Act, 1888 (51 & 52 Vict. c. 43), which, by sect. 147, enacts as follows:—" Every bailiff or officer executing any process of execution issuing out of the Court against the goods and chattels of any person may by virtue thereof seize and take any of the goods and chattels of such person (excepting the wearing apparel and bedding of such person or his family, and the tools and implements of his trade, to the value of 5l., which shall to that extent be protected from such seizure)." In the abovequoted exception, the "bedding" means whatever the person has for the purposes of sleeping accommodation. If he has a bedstead and mattress, they are his bedding; and if his mattress has gone, and he sleeps upon the bedstead, that is his bedding within the meaning of the Act (e). But the foregoing exemption

apparel, bedding, and tools to value of 51.

In the last-mentioned case a sewingmachine, obtained by the tenant under a hire-purchase agreement and used by his wife, was held to be within the exception, although the tenant had the possession only of the machine, and not the property in it. The words "tools . . . of his trade" mean tools to the possession of which the person is entitled for the purposes of his trade.

⁽b) The Hosiery Act, 1843.

⁽c) See sects. 1, 2.

⁽d) 51 & 52 Vict. c. 21, s. 4. As to the remedy upon a distress in violation of this provision, see infra, p. 314.

⁽e) Per Channell, J., in Davis v. Harris, [1900] 1 Q. B. 729, at p. 732. As to sewing-machines, see Churchward v. Johnson (1889), 54 J. P. 326; Muster v. Fraser (1891), 85 L. T. 611.

from distress does not extend to any case where the lease, term, or interest of the tenant has expired, and where possession of the premises in respect of which the rent is claimed has been demanded, and the distress is not made within seven days of the demand (f).

11. Further statutory exemptions.

Other exemptions have been created as follows:—As to meters and pipes, the property of a waterworks company, which are used for the supply of water to a house, by the Waterworks Clauses Acts, 1847 (g), s. 44, and 1863 (h), s. 14; as to gas meters and fittings, by the Gasworks Clauses Act, 1871 (i), s. 18; as to electric lighting apparatus by the Electric Lighting Act, 1882 (k), s. 25; and as to railway rolling stock by the Railway Rolling Stock Protection Act, 1872 (l).

12. Goods of ambassador.

All processes whereby the goods or chattels of any ambassador or other public minister of any foreign prince or state (m), authorised and received as such by the Crown, or of the domestic or domestic servant (n) of any such ambassador or other public minister, may be distrained, are null and void to all intents and purposes whatsoever (o).

II. GOODS CONDITIONALLY PRIVILEGED FROM DISTRESS.

The following kinds of property cannot be distrained if there are sufficient goods of other kinds on the premises to satisfy the distress:—

1. Implements of trade.

Implements of husbandry and trade not in actual use (p).

- (f) 51 & 52 Vict. c. 21, s. 4.
- (y) 10 & 11 Vict. c. 17.
- (h) 26 & 27 Vict. c. 93.
- (i) 34 & 35 Vict. c. 41. The corresponding provision of the Act of 1847, s. 14, is repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66), except so far as it is incorporated with special Acts to which 34 & 35 Vict. c. 41, does not apply. A gas stove is within the exemption: Gaslight and Coke Co. v. Hardy (1886), 17 Q. B. D. 619.
 - (k) 45 & 46 Vict. c. 56.
- (1) 35 & 36 Vict. c. 50; Easton Estate Co. v. Western Waggon Co. (1886), 54 L. T. 735.
- (m) The privilege extends to a British subject accredited to Great Britain by a foreign Government as a member of its embassy: Macartney

- v. Garbutt (1890), 24 Q. B. D. 368.
- (n) This includes secretaries: Triquet v. Bath (1764), 3 Burr. 1478; and servants who are natives of this country: Lockwood v. Coysgarms (1765), 3 Burr. 1676. But the service must be bond fide: Lockwood v. Coysgarne; Triquet v. Bath; see Re Cloete (1891), 65 L. T. 102. And the privilege only covers goods upon premises occupied for the purposes of the embassy: Novello v. Toogood (1823), 1 B. & C. 554.
 - (o) 7 Anne, c. 12, s. 3.
- (p) Gorton v. Falkner (1792). 4 T. R. 565; Roberts v. Jackson (1795). Peake, Add. Cas. 36; Fenton v. Logan (1833), 9 Bing. 676; Nargett v. Nias (1859), 1 E. & E. 439. As to ledger and other business books, see Gauntlett v. King (1857), 3 C. B. N. S. 59.

Beasts of the plough and sheep (q). The exemption of beasts of 2. Cattle and the plough does not extend to cart-colts and young steers not broken in or used for harness or the plough; but under sheep are included sheep of the lessee's under-tenant (r).

In considering whether there is sufficient distress of other Sufficiency of kinds, it is enough if it appears that there were reasonable grounds—such as the appraisement of proper and competent persons at the time of taking—for supposing that the other distrainable goods would not have been sufficient to have satisfied the rent and expenses when sold. The actual result of the sale is not the test (s). Moreover, in ascertaining the other available distress, growing crops are not to be included. The landlord has the right to resort to subjects of distress which are immediately available to raise the arrears of rent by sale (t).

distress.

At common law cattle at agistment were liable to distress (u). 3. Agisted But now (x), where live stock belonging to another person has been taken in by the tenant of a holding to which any of the Holdings Agricultural Holdings Acts, 1883 to 1900, apply (y), to be fed at a fair price (z), agreed to be paid for such feeding by the owner of such stock to the tenant, such stock may not be distrained by the landlord for rent where there is other sufficient distress to be found, and, if it be so distrained by reason of other sufficient distress not being found, there may not be recovered by such distress a sum exceeding the amount of the price so agreed to be paid for the feeding, or, if any part of such price has been paid, exceeding the amount remaining unpaid (a).

cattle. Agricultural Act, 1883,

- (q) Co. Litt. 47 b; Davies v. Aston (1845), 1 C. B. 746. 51 Hen. 3, beasts "that gain the land" and sheep was enacted, was not included in the repeal of the statute by the Statute Law Revision Act, 1863 (26 & 27 Vict. c. 125); see Statutes Revised, I. p. 75.
- (r) Keen v. Priest (1859), 4 H. & N. 236.
- (8) Jenner v. Yolland (1818), 6 Price, 3; infra, p. 287.
- (t) Piggott v. Birtles (1836), 1 M. & W. 441. As to pleading sufficiency of distress, see Dawson v. Alford (1572), Dyer, 312 a.
 - (u) 1 Roll. Abr. 669, pl. 23.
- (x) 46 & 47 Vict. c. 61, s. 45. (y) As to these Acts, see infra, Chap. VII., Sect. 4.

- (z) This need not be a price in money: London and Yorkshire Bank stat. 4, by which the exemption of v. Belton (1885), 15 Q. B. D. 457. Cf. Masters v. Green (1888), 20 Q. B. D. 807.
 - (a) The same (45th) section of the Agricultural Holdings Act, 1883, goes on to provide that the owner of such stock may, at any time before it is sold, redeem it by paying to the distrainor a sum equal to such price as is mentioned in the text, and that any payment so made to the distrainor shall be in full discharge, as against the tenant, of any sum of the like amount which would be otherwise due from the owner of the stock to the tenant in respect of the price of feeding, provided that, so long as any portion of such live stock remains on the holding, the right to

4. Growing crops sold under execution.

5. Lodgers' goods.

Lodgers' Goods Protection Act, 1871, s. 1. Growing crops sold under an execution are liable to distress in default of sufficient distress of the goods of the tenant (b).

The goods of lodgers are protected from distress by the Lodgers' Goods Protection Act, 1871 (c), provided the requirements of the Act are complied with.

If any superior landlord (d) levies a distress on any furniture, goods, or chattels of any lodger for arrears of rent due to such superior landlord by his immediate tenant, the lodger may serve the superior landlord, or the bailiff employed to levy the distress, with a declaration in writing made by the lodger, setting forth that the immediate tenant has no right of property or beneficial interest in the furniture, goods, or chattels so distrained or threatened to be distrained upon, and that such furniture, goods, or chattels are the property or in the lawful possession of the lodger; and also setting forth whether any and what rent is due, and for what period, from the lodger to his immediate landlord: and the lodger may pay to the superior landlord or his bailiff the rent, if any, so due, or so much thereof as shall be sufficient to discharge the claim of the superior landlord. The declaration must have annexed to it a correct inventory, subscribed by the lodger, of the furniture, goods, and chattels referred to in the If the lodger makes or subscribes the inventory and declaration. declaration knowing the same or either of them to be untrue in any material particular, he is guilty of a misdemeanour.

Sect. 3.

Any payment made by a lodger pursuant to sect. 1 is to be deemed a valid payment on account of any rent due from him to his immediate landlord.

Sect. 2.

If, notwithstanding service of the declaration and inventory, the distress is proceeded with, the person levying it is guilty of an illegal distress, and the lodger may apply to a justice of the peace for an order for the restoration of the goods. The superior landlord, but not the bailiff or other person levying the distress (e), is also liable to an action at the suit of the lodger.

distrain such portion shall continue to the full extent of the price originally agreed to be paid for the feeding of the whole of such live stock, or, if part of such price has been bond fide paid to the tenant under the agreement, then to the full extent of the price then remaining unpaid. Disputes under this section may be heard and determined by the county

court, or by a court of summary jurisdiction: sect. 46 of the Agricultural Holdings Act, 1883.

(b) Supra, p. 263.

(c) 34 & 35 Vict. c. 79.

(d) In England or Ireland. The Act does not extend to Scotland: sect. 4.

(e) Page v. Vallis (1903), 19 T. L. R. 393.

A lodger is entitled to protection if he has taken the premises from a person in ostensible possession, even though such person may be merely tenant at sufferance under negotiations for purchase of the lease. It is enough that the relation of tenant and landlord exists (f).

The existence of the relationship of landlord and lodger is a Who is a question of fact (g). The relationship may exist although the lodger is also under-tenant (h), or has the exclusive occupation of what is substantially the whole house (h), with the separate and uncontrolled right of egress and ingress (i); or though the landlord does not render any service to him (k), and does not even reside on the premises (l). What is essential to the relationship is the retention by the immediate landlord by himself or his servants of some such dominion and power over the house which he sublets as the master of a house let in lodgings usually has (m). The lodger himself may act as caretaker of the part reserved to his immediate landlord (n). But the lodger must sleep upon the premises, and a person who occupies part of premises for carrying on business, but sleeps and resides elsewhere, is not a lodger (o).

The declaration must be made after the distress has been made Declaration. or authorized or threatened (p). A declaration served by the lodger at the time of a distress for rent then due will not protect his goods upon a subsequent distress for the same arrears together with fresh arrears (p). And if the landlord sells the lodger's goods within the time allowed by law for the sale of a distress, the lodger may serve the declaration after the sale, and the landlord will be liable under the Act (q). The declaration

```
(f) Bensing v. Ramsay (1898), 14
T. L. R. 345.
```

⁽g) Ness v. Stephenson (1882), 9 Q. B. D. 245.

⁽h) Phillips v. Henson (1877), 3 C. P. D. 26.

⁽i) Toms v. Luckett (1847), 5 C. B. 23, 38.

⁽k) Ness ∇ . Stephenson (1882), 9 Q. B. D. 245, 249.

⁽¹⁾ Morton v. Palmer (1881), 51 L. J. Q. B. 7.

⁽m) Morton v. Palmer, supra; Ness

v. Stephenson, supra.

⁽n) Ness v. Stephenson, supra. As to the meaning of "lodger" electoral purposes, see Bradley v. Baylis (1881), 8 Q. B. D. 195; Kirby v. Biffen (1881), ib. 201.

⁽o) Heawood v. Bone (1884), 13 Q. B. D. 179.

⁽p) Thwaites v. Wilding (1883), 12 Q. B. D. 4.

⁽q) Sharp ∇ . Fowle (1884), 12 Q. B. D. 385. The declaration may be in the following form:—

[&]quot;To Mr. [name of person on whom notice is to be served—i.e., either the superior landlord or the bailiff employed by him to levy the distress.

[&]quot;I, A. B., a lodger in the house No. —, — Street, Manchester, occupied by C. D. [name of immediate tenant], hereby declare that the said C. D. has no right of property or beneficial interest in the furniture, goods, and chattels specified in the inventory annexed hereto, and that

need not state that the declarant is a lodger, or whether any rent is due to the immediate landlord. The absence of a statement on the latter point imports that no rent is due (r).

(b) WHERE DISTRESS MUST BE MADE.

General rule.

A distress for the whole rent may be made on any part of the premises demised, but, generally speaking, a thing cannot be distrained for rent except on the premises demised (s).

52 Hen. 3, c. 15. Subject not to take distresses out of his fee.

It was enacted by the Statute of Marlebridge (52 Hen. 3, c. 15) that "it shall be lawful for no man, from henceforth, for any manner of cause, to take distresses out of his fee, nor in the king's highway, nor in the common street, but only to the king or his officers having special authority to do the same" (1).

Thus, where a barge, floating with the tide, was attached by a rope to a wharf, it was held that the barge was not distrainable for rent due in respect of the wharf, the shore between high and low water mark not being included in the demise (u). the demised premises are adjacent to a highway, there is a presumption that the right to the soil of one half the highway is in the tenant, and a waggon without horses standing on this half can be seized (x); and a paved part of the road adjacent to stables used for keeping a cart is, for the purpose of distress, deemed to be included in a demise of the stables (y).

Distress off the demised premises.

A power to distrain off the demised premises may be given by express agreement, and, provided the power is simply meant to secure payment of a bonû fide rent, it will not be a "licence to take possession of personal chattels as security for a debt" within the meaning of sect. 4 of the Bills of Sale Act, 1878 (z).

such furniture, goods, and chattels to a joint distress for rents reserved are my property [or "are in my lawful possession"].

"The sum of \pounds — is due from me to the said C. D. for rent, from the —— day of ——, 190—, to the — day of —, 190—.

" (Signed) A. B. "The inventory referred to in the above declaration :-- "

[Here describe each article of furniture, &c.—e.g. "6 mahogany chairs covered with leather; 1 managany dining-table," &c., &c.]

(r) Ex parte Harris (1885), 16 Q. B. D. 130.

(s) Per Best, C.J., in Buszard v. Capel (1827), 4 Bing. at p. 140. As

by the same deed upon separate reversions, see Rogers v. Birkmire (1736), Cas. temp. Hard. 245, 2 Str. 1040; Phillips v. Whitsed (1860), 2 E. & E. p. 809.

(t) See also 3 Edw. 1, c. 16.

(u) Capel v. Buszard (1829), 6 Bing. 150. See Lewis v. Read (1845), 13 M. & W. 834.

(x) Hodges v. Lawrance (1854), 18 J. P. 347.

(y) Gillingham \forall . Gwyer (1867), 16 L. T. 640.

(z) Re Roundwood Colliery Co., [1897] 1 Ch. 373. See Daniel v. Stepney (1874), L. R. 9 Ex. 185; Thorpe v. Hurt, W. N. (1886), p. 96

In the following cases, however, the landlord may distrain Exceptions. goods not upon the demised premises:-

Under 11 Geo. 2, c. 19 (a), s. 8, it is lawful for every landlord, 1. Stock feedor his bailiff, to seize, as a distress for rent, any cattle or stock ing on common. of (his) tenant feeding upon any common appendant or appurtenant or anyways belonging to all or any part of the premises demised.

If the landlord comes to distrain cattle which he sees then 2. Cattle within his fee, but the tenant, or any other person, to prevent the landlord from distraining, drives the cattle out of the fee, the to distrain, landlord may freshly follow and distrain them (b). But the landlord cannot distrain cattle out of his fee if, when coming to distrain, he did not see them within his fee, or if the cattle of themselves, after the landlord has seen them, go out of the fee, or if, after the landlord has seen the cattle, the tenant removes them for any other cause than to prevent the landlord from distraining.

which landlord, coming sees on demised pre-

The Distress for Rent Act, 1737, s. 1 (c), provides that in case any tenant for life, years, at will, sufferance or otherwise of any messuages, lands, tenements or hereditaments, upon the demise c. 19, s. 1. or holding whereof any rent shall be reserved, due, or made payable (d), shall fraudulently or clandestinely convey away or carry off or from such premises his goods or chattels, to prevent the landlord from distraining the same for arrears of rent so reserved, due, or made payable, it shall be lawful for every landlord, or any person by him for that purpose lawfully empowered, within thirty days next ensuing such conveying away or carrying off, to seize such goods and chattels, wherever the same shall be found. as a distress for the said arrears of rent, and the same to sell or otherwise dispose of in such manner as if the said goods and chattels had actually been distrained by such landlord upon such premises for such arrears of rent (e). No landlord, or other sect. 2. person entitled to such arrears of rent, shall seize any such goods

3. Fraudulent removal. 11 Geo. 2,

Landlord may, within thirty days, seize and sell goods fraudulently carried

Exception in case goods are bonâ fide sold before seizure.

As to the exception of mining leases from sect. 6 of the Act of 1878, see supra, p. 211.

(a) The Distress for Rent Act, 1737.

(b) Co. Litt. 161 a.

(c) This section replaces sect. 2 of 8 Anne, c. 18 (Ruff. c. 14), which was repealed by 30 & 31 Vict. c. 59.

(d) See Anderson v. Midland Ry.

Co., 3 E. & E. 614.

(e) See Angell v. Harrison (1847), 17 L. J. Q. B. 25. If the occupier of the premises rescues the goods it is doubtful whether an action for treble damages—as in other cases of rescue (infra, pp. 294, 295)—will lie against him: Harris v. Thirkell (1852), 20 L. T. O. S. 98.

or chattels as a distress for the same which shall be sold bon \hat{a} fide, and for a valuable consideration, before such seizure made, to any person not privy to such fraud as aforesaid (f).

Sect. 7.
Landlords
may break
open houses,
&c., in which
goods fraudulently
removed are
secured.

Where any goods or chattels fraudulently or clandestinely conveyed or carried away by any tenant, or other person aiding or assisting therein, shall be put in any house, barn, stable, outhouse, yard, close or place locked up, fastened or otherwise secured, so as to prevent such goods or chattels from being seized as a distress for arrears of rent, it shall be lawful for the landlord, his steward, bailiff, receiver or other person empowered, to seize, as a distress for rent, such goods and chattels,—first calling to his assistance the constable (g) or other peace officer of the hundred, borough, parish, district or place where the same shall be suspected to be concealed, who are hereby required to aid and assist therein; and, in case of a dwelling-house, oath being also first made before some justice of the peace of a reasonable ground to suspect that such goods or chattels are therein,—in the daytime (h), to break open and enter into such house, barn, stable, outhouse, yard, close or place, and to seize such goods or chattels for the said arrears of rent, as he might have done by virtue of this or any former Act if such goods and chattels had been put in any open field or place.

Sect. 3.
Penalty on tenant or person assisting in fraudulent removal of goods.

If any tenant shall fraudulently remove and convey away (or, without actual participation, shall be privy to the removal of (i)) his goods or chattels as aforesaid, or if any person shall wilfully and knowingly (being privy to the fraudulent intent (j)) aid or assist any such tenant in such fraudulent conveying away or carrying off of any part of his goods or chattels, or in concealing (k) the same (although no distress may be in progress or contemplated at the time (l)), every person so offending shall forfeit to the landlord double the value of the goods by him carried off or concealed as aforesaid; to be recovered by action of debt. In

⁽f) See Williams v. Roberts (1852), 7 Ex. 618.

⁽g) The presence of a constable is essential: Rich v. Woolley (1831), 7 Bing. 651, 658; but a special constable appointed for the occasion will suffice: Cartwright v. Smith (1833), 1 Moo. & R. 284.

⁽h) A previous request is unnecessary before breaking into premises to seize goods: Williams v. Roberts (1852), 7 Ex. 618.

⁽i) Lyster v. Brown (1823), 1 C. & P. 121.

⁽j) Brooke v. Noakes (1828), 8 B. & C. 537, 542. See Stanley v. Wharton (1822), 10 Price, 138.

⁽k) Stanley v. Wharton (1821), 9 Price, 301.

⁽¹⁾ It is enough if the landlord is entitled to distrain, rent being at the time in arrear: Stanley v. Wharton (1822), 10 Price, 138.

such an action the amount of rent due need not be proved as alleged in the claim (m).

As an alternative remedy (n), where the goods and chattels so Sect. 4. fraudulently carried off or concealed shall not exceed the value of fifty pounds, the landlord, his bailiff, servant or agent in his behalf, may exhibit a complaint in writing against such offender before two or more justices of the peace of the same county, riding or division of such county, residing near the place whence such goods and chattels were removed, or near the place where the same were found, not being interested in the lands or tenements whence such goods were removed (o), who, after examining the parties concerned upon oath, may, by order under their hands and seals, adjudge the offender to pay double the value of the said goods and chattels to such landlord at such time as the said justices shall appoint.

Before availing himself of the provisions of this statute, the Requisites to landlord should ascertain the following particulars:—

That there is at the time of the distress an actual existing tenancy (p), or, if the tenancy has terminated within six months, that the tenant is in possession. The statute confers upon the landlord a power to distrain in those cases in which, if the goods had not been removed, he might have distrained either under the common law or under the statute 8 Anne, c. 14, and though sect. 6 of the latter statute gives power to distrain after the determination of the tenancy, yet the power is subject to the limitations contained in sect. 7, one of which is that the distress must be levied "during the possession of the tenant from whom such arrears became due." The statute 11 Geo. 2, c. 19, s. 1, does not help a landlord who could not have levied a distress if the goods had remained on the demised premises (q).

Complaint justices.

proceedings under this statute.

1. Existing tenancy.

(q) Gray v. Stait (1883), 11 Q. B. D. 668, p. 672.

⁽m) See Gwinnet v. Phillips (1790), 3 T. R. 643.

⁽n) Bromley v. Holden (1828), M. & M. 175; Horsefall v. Davy (1816), 1 Stark. 169. As to the complaint, 860 Ex parte Fuller (1844), 13 L. J. M. C. 141.

⁽⁰⁾ Or a stipendiary magistrate: Stip. Magistrates Act, 1858 (21 & 22 Vict. c. 73), s. 1. As to the form of the order, see R. v. Bissex (1756), Sayer, 304; R. v. JJ. of Chester (1833), 5 B. & Ad. 439; R. v. Middlehurst (1757), 1 Burr. 399; R. v.

Rabbitts (1825), 6 D. & Ry. 341; R. v. Davis (1833), 5 B. & Ad. 551; R. v. JJ. of Radnorshire (1840), 9 Dowl. 90. As to jurisdiction, R. v. Morgan (1782), Cald. 156; Coster v. Wilson (1838), 3 M. & W. 411. As to appeal to quarter sessions, 11 Geo. 2, c. 19, s. 5; R. v. JJ. of Shropshire (1881), 6 Q. B. D. 669.

⁽p) See Angell v. Harrison (1847), 17 L. J. Q. B. 25; Ashmore v. Hardy (1836), 7 C. & P. 501.

agreement for a lease, followed by entry, creates an immediate tenancy for the purpose of the statute at the rent specified in the agreement (r). And where the trustee in bankruptcy of the tenant uses the demised premises, he becomes tenant to the lessor, and the statute applies (s).

2. Goods belonging to tenant.

That the goods removed belonged to the tenant. A stranger or lodger has a right to remove his goods off the premises at any time, or under any circumstances (t), before the commencement of a distress (u). Hence the landlord cannot follow and seize goods removed by a bill of sale holder entitled under his bill of sale (x).

3. Fraudulent intent.

That the goods were carried off with the fraudulent intent on the part of the tenant of depriving the landlord of his remedy by distress (y). As against the tenant actual participation in the act of removal need not be proved. It is sufficient if the removal takes place with his privity (z). As against the person to whose premises the goods have been removed there is no need under sect. 1 to prove privity, or even to make a previous request before entering the premises (a).

It has been said that, in addition to fraudulent intent, it is essential that no sufficient goods shall remain on the premises to satisfy the rent then due (b); but this has been denied (c), and the statute does not appear to lay down any such condition.

It is for the landlord who has distrained upon goods removed from the premises to show fraudulent intent (d), and the question of fraud is for the jury (e).

When removal is fraudulent.

A removal of goods may be fraudulent though not clandestine. The words are "fraudulently or clandestinely," and the statute

- (r) Anderson v. Mid. Ry. Co. (1861), 3 E. & E. 614. Cf. supra, pp. 80, 81.
- (s) Welch v. Myers (1816), 4 Camp. 368.
- (t) Per Martin, B., in Foulger v. Taylor (1860), 5 H. & N. at p. 210; Thornton v. Adams (1816), 5 M. & S. 38; Postman v. Harrell (1833), 6 C. & P. 225; Fletcher v. Marillier (1839), 9 A. & E. 457.
- (u) Wood v. Nunn (1828), 5 Bing. 10. As to the liability of the landlord for interfering to prevent the removal of a stranger's goods, see England v. Cowley (1873), L. R. 8 Ex. 126.
 - (x) Tomlinson v. Consol. Credit

- Corporation (1889), 24 Q. B. D. 135.
- (y) Parry v. Duncan (1831), 7 Bing. 243, 246; John v. Jenkins (1832), 1 Cr. & M. 227.
- (z) Lister v. Brown (1823), 5 D. & Ry. 501.
- (a) Williams v. Roberts (1852), 7 Ex. 618.
- (b) Opperman v. Smith (1824), 4 D. & Ry. 33; Parry v. Duncan (1831), 7 Bing. 243.
- (c) Gillum v. Arkuright (1850), 16 L. T. O. S. 88, per Patteson, J.
- (d) Inkop v. Morchurch (1861), 2 F. & F. 501.
 - (e) Opperman v. Smith, supra.

applies to a fraudulent removal although made openly with notice given to the landlord (f). And, as a rule, a removal will be fraudulent if the landlord is thereby turned over to his barren right of action (f). But the mere removal of goods by the tenant from the demised premises, when the rent is in arrear, is not of itself fraudulent as against the landlord (g); nor is every conveying away of the goods of a tenant penal, although it may operate to defeat the landlord's right (h). It may not be fraudulent, for instance, if the tenant disputes the landlord's rights (i).

To constitute a fraudulent removal the fraud must be that of the tenant or of the person removing the property for his benefit (h). The statute was never meant to extend to a creditor who is seeking payment of his debt bond fide; and such creditor may, for the purpose of satisfying such debt and with the assent of the debtor, take possession of his goods, and remove them from the premises without incurring any penalty under the statute, even though he knows that the debtor is in distressed circumstances, and is apprehensive that his goods may be distrained (h).

It has been held that it is necessary that the rent should be 4. Rent due. actually due at the time of the removal of the goods (j), and, in spite of a doubt expressed by Lord Ellenborough in Furneaux v. Fotherby (k), the point was decided in this sense in Rand v. Vaughan (l). It is the place, it was said, not the time of the distress, to which the statute intends to apply the remedy. But Rand v. Vaughan was disapproved in Dibble v. Bowater (m), where it was held that the landlord was at any rate justified in following and distraining goods which had been removed on the morning of the day on which rent became due (n).

An action under the statute is a penal action (o). Consequently Action under the plaintiff is not entitled to administer interrogatories (p), and the statute. his case must be strictly proved (q).

```
(f) Opperman v. Smith, supra.
(g) Parry v. Duncan (1831), 7
Bing. 243, 246.
(h) Bach v. Meuts (1816), 5 M. &
S. 200, 204—206.
(i) John v. Jenkins (1832), 1 Cr. &
M. 227.
(j) Watson v. Main (1799), 3 Esp.
```

(k) (1815), 4 Camp. 136.

(l) (1835), 1 Bing. N. C. 767. (m) (1853), 2 E. & B. 564.

⁽n) See supra, p. 223.
(o) Though held otherwise in Stanley v. Wharton (1821), 9 Price, 301.
(p) Hobbs & Co. v. Hudson (1890), 25 Q. B. D. 232.
(q) Brooke v. Noakes (1828), 8 B. & C. 537.

Removal of furniture in the metropolis.

Within the metropolitan police district (r) any constable may stop and detain, until due inquiry can be made, all carts and carriages which he shall find employed in removing the furniture of any house or lodging between the hours of eight in the evening and six in the following morning, or whenever the constable shall have good grounds for believing that such removal is made for the purpose of evading the payment of rent (s).

(c) WHEN DISTRESS MUST BE MADE.

At common law no distress can be made after the termination of the tenancy (t), but a limited right of distress is provided for this case by the Landlord and Tenant Act, 1709, by which it is enacted as follows:--

Landlord may distrain for rent after determina-

c. 14 (u), s. 6.

8 Anne.

tion of lease.

Sect. 7. Distress to be made within six months after determination of lease and during pos-

session of tenant

"It shall and may be lawful for any person or persons, having any rent in arrear or due upon any lease for life or lives or for years or at will ended or determined, to distrain for such arrears after the determination of the said respective leases, in the same manner as they might have done if such lease or leases had not been ended or determined; provided that such distress be made within the space of six calendar months after the determination of such lease, and during the continuance of such landlord's title or interest, and during the possession of the tenant from whom such arrears became due."

The statute applies only where the lease has determined. A custom of the country under which the tenant is entitled to leave his awaygoing crops in the barns, or to use the barns to thresh his corn and fodder his cattle, for a certain time after the expiration of the lease, operates as a prolongation of the term, and during such prolongation the landlord may distrain independently of the statute (x). Where there is an agreement to surrender a lease upon condition, and the condition is not performed, the tenancy continues to subsist, and with it the right of the landlord to distrain for arrears of rent (y).

The statute applies to cases in which the tenancy has been determined by lapse of time or notice to quit, but not to

(r) See 10 Geo. 4, c. 44, s. 4.

(s) The Metropolitan Police Act, 1849 (2 & 3 Vict. c. 47), s. 67.

(t) Williams v. Stiven (1846), 9 Q. B. 14.

(u) C. 18 in the Statutes Revised. (x) Beavan \forall . Delahay (1788), 1 H. Bl. 5, see note (a), p. 7; Boraston v. Green (1812), 16 East, at p. 81; Knight v. Benett (1826), 3 Bing. 364, 366. See infra, Chap VII., Sect. 3. (y) Coupland v. Maynard (1810),

12 East, 134.

termination by forfeiture, as upon a wrongful disclaimer or for a breach of covenant (z).

RENT.

A tenant who has left the premises will not be deemed to Possession remain in possession by reason only of leaving a few goods there, these not being left with a view to keeping possession, and the landlord cannot in such a case distrain under the statute (a). Where the tenancy is determined by the death of the tenant—as where it is a tenancy at will—the possession of his administrator cannot be attributed to the tenancy so as to attract the statute (b); but it is otherwise where the tenancy continues, and the landlord can distrain if the administrator is in possession (c).

premises.

of tenant.

There is nothing in this statute confining its operation to a Possession of wrongful holding over, or to a holding of the whole of the demised part of Hence, where a tenant, by permission of the landpremises (d). lord, remains in possession of part of a farm after the expiration of his tenancy, the landlord may distrain on that part within six months after the expiration of the tenancy (e). But it is otherwise if he remains in possession of part under a new agreement for a tenancy of that part, and such possession will not entitle the landlord to distrain on the part for the arrears of rent in respect of the entire premises (f).

Although the tenant is not in default till the day after the rent is due, yet only nominal damages will be given if the landlord interferes after sunset of the rent day to prevent a threatened removal of goods (g).

A distress must be made in the daytime. If made before sun- Time at which rise, or after sunset, it will be illegal, although at the time there may be ample daylight (h). Persons who distrain ought not, however, to go so near these limits as to raise any doubt on the subject (i).

distress must

A landlord may expressly agree not to distrain for a certain Postpone-

ment of right to distrain.

```
(z) Doe v. Williams (1835), 7 C. &
P. 322; Grimwood v. Moss (1872),
L. R. 7 C. P. p. 365; Kirkland v.
Briancourt (1890), 6 T. L. R. 441;
infra, Chap. VI., Sect. 2 (3) (iii).
 (a) Taylerson v. Peters (1837), 7
A. & E. 110.
```

(b) Turner v. Barnes (1862), 2 B. & S. 135.

(c) Braithwaite v. Cooksey (1790), 1 H. Bl. 465.

(d) Judgment in Nuttall v. Staunton, 4 B. & C. at p. 56.

(e) Nuttall v. Staunton (1825), 4 B. & C. 51.

(f) Wilkinson v. Peel, [1895] 1 Q. B. 516.

(g) $Lamb \ \forall . \ Wall (1859), 1 \ F. \& F.$ 503. See England v. Cowley (1873), L. R. 8 Ex. 126.

(h) Aldenburgh v. Peaple (1834), 6 C. & P. 212; Tutton v. Darke (1860), 5 H. & N. 647; Lamb v. Wall, supra.

(i) Per Martin, B., in Tutton v. Darke, 5 H. & N. at p. 655.

time, or until a certain event (k); though where the rent is agreed to be paid "being lawfully demanded," the distress is a sufficient demand (l). Where there is no express contract, an agreement to postpone the distress may sometimes be implied; thus, on proof that the landlord of a farm permitted a sale by the tenant of the eatage of a pasture for a specified period, on condition that the amount produced by such sale was to be paid to the landlord, a contract may be inferred on his part not to distrain the cattle of the purchaser (m). But an express power of distress, exercisable at the expiration of a specified period after default in payment of rent, does not, in the absence of negative words, exclude the common law power, and this may be exercised immediately on default (n).

(d) Amount for which Distress may be made.

The common law does not cast any obligation on the person distraining to inform the tenant what is the amount of arrears for which the distress is made (o). The person distraining is entitled to a tender of the amount really due, and upon his refusal to accept that sum, the tenant's course is to replevy the goods (p). Hence no action can be maintained for distraining for more rent than is due, even when it is alleged to have been done maliciously (q), unless it appears that the goods seized and sold were of greater value than was necessary to satisfy the arrears of rent actually due (r).

Distress for more rent than is due.

Arrears of rent.

Six years' arrears of rent only recoverable by distress. In distraining for rent the amount which can be recovered is limited by the Real Property Limitation Act, 1833 (s), s. 42, to ix years' arrears, unless the time is extended by acknowledgment; the section enacting that no arrears of rent, nor any damages in respect of such arrears of rent, shall be recovered by any distress,

(k) Giles v. Spencer (1857), 3 C. B. N. S. 244. See Welsh v. Rose (1830), 6 Bing. 638.

(l) Browne v. Dunnery (1618), Hob. 208; Kind v. Ammery (1619), Hutton,

- (m) Horsford v. Webster (1835), 1 Cr. M. & R. 696.
- (n) Re River Swale Brickworks (1883), 52 L. J. Ch. 638. See Litt. sect. 331.
- (o) Judgment in *Tancred* v. *Leyland* (1851), 16 Q. B. at p. 680. See also 11 Ex. 879.

- (p) Glynn v. Thomas (1856), 11 Ex. 870. See Fell v. Whitaker (1871), 41 L. J. Q. B. 78.
- (q) Stevenson v. Newnham (1853), 13 C. B. 285.
- (r) Wilkinson v. Terry (1834), 1 Moo. & R. 377; Tancred v. Leyland (1851), 16 Q.B. 669; Glynn v. Thomas (1856), 11 Ex. 870; French v. Phillips (1856), 1 H. & N. 564.

(s) 3 & 4 Will. 4, c. 27. As to the limitation on a distress levied after the tenant's bankruptcy, see infra, p. 324.

action, or suit, but within six years next after the same respectively shall have become due, or next after an acknowledgment of the same in writing shall have been given to the person entitled thereto, or his agent, signed by the person by whom the same was payable, or his agent.

But so long as the relation of landlord and tenant lasts the right to recover the rent to the extent of six years' arrears is not barred by lapse of time (t). Sect. 1 of the Real Property Limitation Act, 1874 (u), which bars distress for rent after twelve years, applies to rent-charges, and not to conventional rents reserved on leases for years (x).

A further important limitation of the right of distress has been Limitation in imposed by statute with respect to holdings to which the Agricultural Holdings Acts, 1883 and 1900 (y), apply (z). A landlord holdings. entitled to the rent of any such holding is by sect. 44 of the Act of 1883 prohibited from distraining for rent which became due in respect of such holding more than one year before the making of such distress; provided that, where it appears that, according to the ordinary course of dealing between the landlord and the tenant of a holding, the payment of the rent of such holding has been allowed to be deferred until the expiration of a quarter of a year or half a year after the date at which such rent legally became due, then, for the purpose of the section, the rent of the holding is to be deemed to have become due at the expiration of such quarter or half-year as aforesaid, as the case may be, and not at the date at which it legally became due(a).

In a case within the proviso just stated, the landlord is entitled to distrain for rent at the time of distress legally due, but not then payable according to the course of dealing, and also for rent which had become legally due more than a year previously, but had become payable according to the course of dealing less than

31 Sol. Journ. p. 272, and the comments at p. 263. For a summary mode of settling, in a county court or a court of summary jurisdiction, any dispute in respect of a distress contrary to the provisions of the Agric. Hold. Acts, or in respect of distress generally on a holding to which these Acts apply, see sect. 46 of the Agric. Hold. Act, 1883.

respect of agricultural

⁽t) Archbold v. Scully (1861), 9 H. L. C. 360.

⁽u) 37 & 38 Vict. c. 57.

⁽x) Grant v. Ellis (1841), 9 M. & W. 113.

⁽y) 46 & 47 Vict. c. 61; 53 & 54 Vict. c. 57.

⁽z) I.e., agricultural or pastoral holdings and market gardens: sect. 54 of the Agric. Hold. Act of 1883.

⁽a) See Fairlamb v. Beaumont (1887),

a year previously, although the total amount distrained for exceeds one year's rent (b).

(e) Mode of making Distress.

Employment of Bailiff.

Bailiff's certificate.

51 & 52 Vict c. 21, s. 7.

The landlord may distrain in person (c); but the more prudent course is to employ a bailiff, and the bailiff must have a certificate properly granted under the Law of Distress Amendment Act, 1888 (d), s. 7, which section provides that, from and after the commencement (e) of that Act, no person shall act as a bailiff to levy any distress for rent unless he shall be authorized to act as a bailiff by a certificate in writing under the hand of a county court Judge; and that such certificate may be general or apply to a particular distress or distresses, and may be granted in such manner as may be prescribed by rules under the Act (f). same section further provides that nothing in it is to be deemed to exempt such a bailiff from any penalty to which he may be liable in respect of any extortion or misconduct; that a county court registrar may exercise the power of granting certificates in cases in which he may be authorized to do so by rules made under the Act (f); and that if any person not holding a certificate shall levy a distress contrary to the provisions of the Act, the person so levying, and any person who has authorized him so to levy, shall be deemed to have committed a trespass.

It is enough that the bailiff has authority from the Judge of any county court, though not of the court where the premises are situate (g).

(b) Ex parte Bull (1887), 18 Q. B. D. 642.

(c) It appears that this is so notwithstanding the Law of Distress Amendment Act, 1888: Jackson v. Bennan, cited in Hunter's Law of Distress, 5th ed. p. 31.

(d) An uncertificated person who levies a distress is liable to a fine of 10l.; this is without prejudice to any civil liability: Law of Distress Amendment Act, 1895 (58 & 59 Vict.

c. 24), s. 2.

(e) I.e., the 31st October, 1888.

(f) See the Distress for Rent Rules, 1888, dated the 31st August, 1888, and made by the Lord Chancellor under a power conferred by sect. 8 of the Act of 1888. Under those rules a special certificate—i.e., a certificate specifying the particular distress or distresses to which it relates—may be granted by the Judge or by the registrar; but a general certificate—i.e., a certificate authorising the bailiff named in it to levy at any place in England or Wales—is to be granted only by the Judge in person. The Judge of the county court can cancel the certificate without reason assigned: Law of Distress Amendment Act, 1895, s. 1.

(g) See Re Sanders (1885), 54 L.J. Q. B. 331, a case decided on sect. 52 of the Agric. Hold. Act, 1883, which section was in pari materia with sect. 7 of the above Act of 1888, by which Act (sect. 9) sects. 49—52

distress.

Under this section the managing director of an incorporated company is prohibited from distraining on behalf of the company. If he distrains, he distrains as bailiff (h).

The bailiff should be authorized to act by a warrant of distress Warrant of signed by the landlord (i), though such written warrant is not essential (k), and a corporation aggregate may appoint a bailiff to distrain without deed or warrant (l). An authority to distrain does not require a stamp (m); but it would seem that, if it contains an undertaking whereby the landlord engages to indemnify the bailiff, it should be stamped as an agreement (n). The landlord may ratify a distress made without authority (o); and a distress made after the death of the landlord, though by his direction, may be adopted by the executor, notwithstanding that it is made before probate (p).

The person distraining is not justified in calling in a police officer unless there are threats of resistance, or apprehension of violence, or other similar circumstances (q).

The landlord is responsible to the tenant for irregularities Landlady's committed by the bailiff in carrying out his instructions (r); such, for instance, as selling the goods without notice of distress, or without appraisement (if appraisement is necessary) (s), or levying an excessive distress (t). But the landlord is not liable for the wrongful act of his bailiff in seizing what his warrant

liability to

(inclusive) of the Agric. Hold. Act, 1883, were repealed.

(h) Hogarth v. Jennings, [1892] 1 Q. B. 907.

(i) Form of Warrant. "To Mr. A. B., my bailiff.

"Distrain such of the goods and chattels as may lawfully be distrained for rent in and upon the house [or farm] and premises occupied by C.D., situate at ——, in the parish of ——, in the county of ——, for ——l., being the amount of [one half-year's] rent due to me in respect of the same, on the ——day of ——last, and proceed thereon for the recovery of the said rent as the law directs.

"E. F. "Dated the —— day of ——, 19—."

(k) See Whitehead v. Taylor (1839), 10 A. & E. 210.

(1) Cary v. Matthews, 1 Salk. 191

(note); Smith v. Birmingham Gas Co. (1834), 1 A. & E. 526. See Strong v. Elliott, infra, p. 297.

(m) See Pyle v. Partridge (1846), 15 M. & W. 20.

(n) Compare wording of Stamp Act, 1891, Schedule "Agreement," Exemption (1), with 55 Geo. 3, c. 184, on which it was held otherwise: Cox v. Bailey (1843), 6 M. & Gr. 193.

(o) Trevilian v. Pyne (1708), 11 Mod. 112; e.g., by employing a solicitor to defend the bailiff, Duncan v. Meikleham (1827), 3 C. & P. 172.

(p) Whitehead v. Taylor, supru. (q) Skidmore \mathbf{v} . Booth (1834), 6 C. & P. 777.

(r) See Kinsella v. Hamilton (1890), 26 L. R. Ir. 671.

(s) Haseler v. Lemoyne (1858), 5 C. B. N. S. 530. See infra, p. 315, as to other irregularities.

(t) Megson **v.** Mapleton (1884), 49 L. T. 744.

tenant for acts of bailiff. does not authorize him to seize (u), unless the landlord ratifies the bailiff's act, with knowledge of the wrongful seizure (x), or chooses, without inquiry, to take the risk upon himself and to adopt the bailiff's acts (y).

Bailiff's indemnity.

1. Implied.

2. Express.

An indemnity by the landlord to the bailiff is implied from the authority to distrain, but this extends only to acts properly done by him in the exercise of his authority (z).

Frequently, however, an express indemnity is appended to the distress warrant, and the effect of this will vary according to its terms. It has been held that after an authority to a bailiff to distrain the goods of the tenant, an indemnity against all costs and charges that he may be at on that account applies only to cases where the distress is illegal on the ground that the landlord has no right to put in a distress (a). An indemnity against all costs in respect of any law expenses, actions that may arise, and all charges or expenses on that account, extends to the costs of defending an action wrongfully brought against the bailiff by the tenant (b).

Bailiff's liability to landlord.

On the other hand, the duty of using proper care and diligence in ascertaining that the distress may be safely made is cast upon the bailiff in cases of ordinary distresses for rent, unless the landlord by his conduct has dispensed with it (c). The landlord may recover from the bailiff damage occasioned by his negligence or misconduct (d), as where the goods distrained are lost through want of reasonable care (e); or by irregularity in the distress, as where he makes an excessive seizure, so that the landlord is liable to the tenant (f).

(u) This seems to have been over-looked in Hurry v. Rickman (1831), 1 Moo. & R. 126, where it was held that the landlord was prima facie liable for the act of the bailiff in taking privileged goods, though he could avoid liability by repudiating the seizure as soon as it came to his knowledge.

(x) See Moore v. Drinkwater (1858), 1 F. & F. 134.

(y) Lewis v. Read (1845), 13 M. & W. 834; Freeman v. Rosher (1849), 13 Q. B. 780; Haseler v. Lemoyne 1858), 5 C. B. N. S. 530. But see Gauntlett v. King (1857), 3 C. B. N. S. 59, where it seems to have been assumed that a landlord giving a

general authority to a broker to distrain is responsible if the broker exceeds his authority.

(z) See Bullen & Leake's Pleadings. 5th ed. 422, note (g).

(a) Draper v. Thompson (1829), 4 C. & P. 84, 86.

(b) See Ibbett v. De la Salle (1860).6 H. & N. 233.

(c) Judgment in Toplis v. Grave (1839), 5 Bing. N. C. at p. 651.

(d) 2 Chitty on Pleading, 7th ed. 503.

(e) White v. Heywood (1888), 5 T. L. R. 115.

(f) Megson v. Mapleton (1884). 49 L. T. 744.

Demand of Rent.

It is desirable, though not essential, that the arrears of rent should be formally demanded from the tenant before the distress is made. If the rent due, without any additional sum for expenses, is unconditionally tendered to the landlord, or his Effect of agent authorized to receive it (g), before seizure made, though tender of rent. after the warrant has been delivered to the bailiff, it is illegal to proceed with the distress (h). Where a landlord gives a warrant to distrain, it seems that he thereby necessarily authorizes the bailiff to receive the rent if tendered (g). A sufficient tender before the distress renders the whole proceeding illegal: a sufficient tender after the distress, but before the goods are impounded, renders the subsequent detainer illegal (i). But attending on the land to pay rent will not destroy the right to distrain, unless a tender is actually made (k).

Entry.

In distraining, the landlord must not break into the premises, Entry to but, subject to that limitation, he may, if he can, gain access to them, although the entry, if effected by a stranger, would be a trespass (l).

If the door of the house is shut, the landlord has authority Outer door. by law to open it in the ordinary way in which other persons can do it, when it is left so as to be accessible to all who have occasion to go into the premises (m); as, for instance, by lifting a latch or pulling out a staple which serves to keep the door

closed (m).

But the outer door (n) or window (o) of the tenant's house or of his stable or other building, whether within the curtilage of the dwelling-house or not (p), must not be forcibly broken open, or

(g) Hatch v. Hale (1850), 15 Q. B.

(h) Bennett v. Bayes (1860), 5 H. & N. 391. See Branscomb v. Bridges (1823), 1 B. & C. 145; Holland v. Bird (1833), 10 Bing. 15.

(i) See judgment in Holland v. Bird, 10 Bing. at p. 18. As to the effect of a tender after the goods are impounded, see infra, p. 298.

(k) Horne v. Lewin (1701), 1 Ld.

Raym. 639.

(1) Long v. Clarke, [1894] 1 Q. B. 119; American Must Corp. v. Hendry (1893), 62 L. J. Q. B. 388.

- (m) Ryan v. Shilcock (1851), 7 Ex. 72, 76. See the observations of Cockburn, C.J., on the doctrine laid down in this case, in Nash v. Lucus (1867), L. R. 2 Q. B. 594. See also Curtis v. Hubbard, 1 Hill's Rep. (New York), 336.
- (n) See Semayne's Case (1605), 5 Rep. 91; 1 Sm. L. C. 11th ed. 104.
- (o) Attack v. Bramwell (1863), 3 B. & S. 520. See Hancock v. Austin (1863), 14 C. B. N. S. 634.
- (p) Brown v. Glenn (1851), 16 Q. B. 254. See the judgments of Bowen, L.J., in American Must Corp.

the landlord who has entered to distrain, and has sold the goods distrained, will be liable to an action of trespass, in which the tenant may recover the full value of such goods, although the proceeds of the sale have been applied in satisfaction of the rent (q). By the outer door is to be understood the main door of the house or building, not a gate which gives access to the premises from the road (r).

Inner door.

If the outer door is open, the person distraining may break open an inner door or lock (s).

Window.

It has been said that entry may be lawfully made through an open window (t), or by further opening a window which is already open (u); but it is illegal to open a window for the purpose of entering, whether such window is fastened with a hasp (x) or shut and not fastened (y). The landlord may lawfully gain access to the tenant's house by climbing over a wall or a fence (z); and he may enter by an open skylight (a).

When outer door may be broken open.

If, however, a lawful entry has once been effected, but the person distraining is forcibly turned out of possession (b), or, having temporarily left, is kept out of possession (c), there being no evidence of an abandonment of the goods (d), he is justified in breaking open the outer door in order to regain possession. A delay of six days has been held to deprive the landlord of this right of forcible re-entry (e). But when a person has merely got his foot and arm between the door and the lintel, or by putting a pair of shears between the door and the lintel has prevented the door from being closed, he has not such a possession as will entitle him to break open a door or window in order

v. Hendry, supra, and of Lord Esher, M.R., in Long v. Clarke, supra. As to the exception in the case of goods which have been fraudulently removed, see supra, p. 271.

(q) Attack v. Bramwell (1863), 3

B. & S. 520. (r) American Must Corp. v. Hendry, supra.

(s) Browning v. Dann (1736), Bull. N. P. 81; 2 Wms. Saund. ed. 1871, 664, note (1).

(t) Per Pollock, C.B., in Nixon v. Freeman (1860), 5 H. & N. at p. 653; Long v. Clarke, [1894] 1 Q. B. 119. See Gould v. Bradstock (1812), 4 Taunt. 562.

(u) Crabtree v. Robinson (1885), 15 Q. B. D. 312. (x) Hancock v. Austin (1863), 14 C. B. N. S. 634, 639.

(y) Nash v. Lucas (1867), L. R. 2 Q. B. 590.

(z) Long v. Clarke, [1894] 1 Q. B. 119; approving Eldridge v. Stacey (1863), 15 C. B. N. S. 458, and questioning Scott v. Buckley (1867), 16 L. T. 573.

(a) Miller v. Tebb (1893), 9 T. L. R. 515.

(b) Eagleton v. Gutteridge (1843), 11 M. & W. 465, 469; Eldridge v. Stacey (1863), 15 C. B. N. S. 458.

(c) Bannister v. Hyde (1860), 2 E. & E. 627.

(d) See infra, p. 293.

(e) Russell v. Rider (1834), 6 C. & P. 416.

to gain admission to the house (f). It seems that after the person distraining has lawfully entered he may break open the outer door in order to remove the goods distrained (g).

It would appear that an actual entry upon the demised Constructive premises by the person distraining is not in all cases necessary. Where the article seized is just inside the door, the tenant being at the door, and the wife of the landlord, as his agent, in such a position as to be able in one moment to put her foot into the room, it will be taken that she is constructively in the room (h).

If the demise be of an incorporeal hereditament, no entry can Incorporeal be made on it, and no goods and chattels can be found on nereau it; and, in like manner, if the goods and chattels be of an Patent right. incorporeal nature, they can have no local position upon the land demised, and are incapable of seizure into the possession of the landlord. It is essential to a distress that the property distrained should be capable of physical possession. Accordingly a patent right, being an incorporeal chose in action, entirely distinct from the right of property in chattels made according to the patent, is not part of such chattels, and is incapable of seizure under a distress for rent (i).

entry.

Seizure.

Entry having been made, the next step is to seize the goods. Seizure For this purpose, any distinct expression of an intention to distrain will suffice, provided it is accompanied by definite acts carrying it substantially into effect (k). But mere intention, even if some steps are taken to carry it into effect, is not sufficient, if the landlord desists before completion (l). It is not necessary that an actual formal seizure should be made. It is enough if the landlord or his agent takes effectual means to prevent the removal of the goods from the premises (m); and the prevention is deemed to be effectual if the landlord declares that the goods shall not be removed till the rent is paid (n).

See Swann v. Falmouth (1828), 8 B. & C. 456; Hutchins v. Scott (1837), 2 M. & W. 809; Thomas v. Harries (1840), 1 M. & Gr. 695; Tennant v. Field (1857), 8 E. & B. 336; Iredale v. Kendall (1878), 40 L. T. 362.

(l) Spice v. Webb (1838), 2 Jur. 943. (m) Cramer v. Mott (1870), L. R. 5 Q. B. 357, p. 359, per Cockburn, C.J. (n) Cramer v. Mott, supra; and 39 L. J. Q. B. p. 173.

⁽f) Boyd ∇ . Proface (1867), 16 L. T. 431.

⁽g) Pugh v. Griffith (1838), 7 A. & E. 827.

⁽h) See judgment of Cockburn, C.J., in Cramer v. Mott (1870), 39 L. J. Q. B. at p. 173.

⁽i) British Mutoscope, &c., Co. v. Homer, [1901] 1 Ch. 671, at pp. 675, 676.

⁽k) Bullen on Distress, 2nd ed. 153.

This constitutes a seizure (o), and the subsequent removal of the goods adversely to the landlord is unlawful. A fortiori, it amounts to a distress where the landlord claims the goods and tries to detain them (p). But unless there has been an actual distress, no action will lie at the suit of the landlord against a creditor of the tenant who removes the tenant's goods (q).

A seizure of some goods as a distress, in the name of all the goods in the house, will operate as a valid seizure of all the goods in the house (r). It is not necessary for the landlord to go into all the rooms of the house, if he makes an inventory of the goods seized, and puts a man into possession (s). And a seizure can be made without leaving a man in possession, if the articles seized are clearly indicated, and notice of the seizure given to the tenant (t).

But if goods are removed by the landlord which were not originally taken under the distress or included in the inventory because not discovered at the time, the tenant is entitled to maintain trover for them (u). And where the goods in the inventory are taken, and also others placed with them by the tenant, the doctrine of confusion does not apply so as to prevent the tenant bringing trespass (x).

Requisites to seizure.

In making the seizure the following points should be observed:

1. Must not be excessive.

That the goods distrained do not greatly exceed in saleable value (y) the amount of the arrears of rent and costs of the distress. An excessive distress is forbidden both by the common 52 Hen. 3, c. 4. law and by statute. Thus 52 Hen. 3, c. 4, provides as follows:—

"Distresses shall be reasonable and not too great, and he that taketh great and unreasonable distresses shall be grievously amerced for the excess of such distresses."

When, however, a landlord is about to make a distress, he is not bound to calculate very nicely the value of the property It is sufficient if he takes care that some proportion is kept between that and the sum for which he is entitled to take

```
(o) Wood v. Nunn (1828), 5 Bing.
10.
  (p) Werth v. London and Westminster
Loan Co. (1889), 5 T. L. R. 320.
  (q) Pool v. Crawcour & Co. (1884),
1 T. L. R. 165.
  (r) Dod v. Monger (1705), 6 Mod.
215.
  (s) Tennant v. Field (1857), 8 E. &
```

B. 336. (t) Swann v. Falmouth (1828), 8 B. & C. 456. (u) Bishop v. Bryant (1834), 6 C. & P. 484. (x) Smith v. Torr (1862), 3 F. & F. **505.** (y) See Wells v. Moody (1835), 7 C. & P. 59.

Action for excessive

distress.

it (z). All that the landlord is bound to do is to exercise a reasonable and honest discretion; he is authorized to protect himself by seizing what any reasonable man would think adequate for the satisfaction of his claim (a).

If goods are seized (b) to an excessive amount,—as, for instance, if goods worth between 30l. and 40l. are distrained for a rent of ten guineas (c), or goods worth 260l. for a rent of 1211. 15s. 6d. (d), or goods worth 100l. for a rent of 9l. (e), the landlord will be liable to an action for damages; and the tenant is entitled in such action to recover a verdict with nominal damages, although he has had the use of the goods all the time and fails to prove any actual damage (f). Thus an action will lie for an excessive distress and leaving a man in possession, although the tenant's goods are not so completely removed from his control as to prevent him from carrying on his business (g); and it is the same where the landlord is precluded from removing the goods, as in the case of cut or growing corn, although in most such cases the damages would be all but nominal (h). But a mere intention to distrain does not give a cause of action for excessive distress; hence in the case of fixtures there is no excessive distress unless something is physically done to them, so as to make them of less value to the tenant. It is not enough that they are included in the inventory and notice of sale (i).

For the purpose of determining whether a distress is excessive, when distress the price which the goods realize at a sale by auction is good primâ facie evidence of their value (k). But it has been held that an actual sale made under the distress, though not proved to be fraudulent or unfair, is not a conclusive test of value, and the

is excessive.

⁽z) Willoughby v. Backhouse (1824), 2 B. & C. p. 823.

⁽a) Roden v. Eyton (1848), 6 C. B. 427, per Wilde, C.J., at p. 430.

⁽b) See Crowder v. Self (1839), 2 Moo. & R. 190.

⁽c) Branscombe v. Bridges (1822), 3 Stark. 171.

⁽d) Chandler v. Doulton (1865), 3 H. & C. 353.

⁽e) Fell v. Whittaker (1871), L. R. 7 Q. B. 120.

⁽f) Piggott v. Birtles (1836), 1 M. & W. 441; Chandler v. Doulton (1865), 3 H. & C. 553. And, as to damages, see Grace v. Morgan (1836), 2 Bing. N. C. 534.

⁽g) Baylis v. Usher (1830), 4 Moo. & P. 790; S. C. Bayliss v. Fisher, 7 Bing. 153.

⁽h) Piggott v. Birtles (1836), 1 M. & W. 441, 450. As to damages for sale of young crops before they are cut, see Proudlove v. Twemlow (1833), 1 Cr. & M. p. 329; and as to pleadings in an action for excessive distress, see Thompson v. Wood (1843), 4 Q. B. 493; Sells v. Hoare (1824), 1 Bing. 401.

⁽i) Beck v. Denbigh (1860), 29 L. J. C. P. 273.

⁽k) Rapley v. Taylor (1883), C. & E. 150; Wells v. Moody (1835), 7 C. & P. **39.**

tenant may therefore maintain an action, although the sale of the goods distrained (less the expenses) did not realize the amount of rent due (l). An appraisement of goods by two sworn appraisers under 2 Will. & M. sess. 1, c. 5, is only primâ facie evidence of value (m). If only a single chattel is to be found on the premises, the person distraining will not be liable to an action for excessive distress, though the value of such chattel exceeds the amount of the rent due (n).

Excessive distress on goods of third party.

The action lies also at the suit of a third party whose goods have been seized, whether a lodger (o) or a stranger, and damages should be awarded to him in the proportion of the value of his goods to that of the whole goods distrained (p). Where the goods of the tenant have been assigned to a trustee for his wife, the tenant has, from his enjoyment of the use of them, a special property which entitles him to maintain an action for excessive distress (q).

2. Sufficient must be taken.

When second distress may be made for same rent.

While avoiding an excessive seizure, however, the person distraining should take sufficient to cover the arrears of rent; for he cannot distrain twice for the same rent where he might have taken sufficient at first (r). There are, however, circumstances under which the landlord may distrain again, if it is not done vexatiously (s). Where there is a mistake as to the value of the goods, and the landlord fairly supposed the distress to be of the proper amount at the first levy, and afterwards finds it insufficient, he may distrain for the balance (t); and so if he forbears realizing the first distress at the request of the tenant (u). But if there is a fair opportunity, and there is no lawful cause why he should not work out the payment of the rent by the first distress, his duty is to work it out by that distress, and he cannot distrain again (u).

(l) Smith v. Ashforth (1860), 29 L. J. Ex. 259.

(m) Cook v. Corbett (1876), 24 W. R. 181.

(n) Avenell v. Croker (1828), Moo. & M. 172. See Field v. Mitchell (1807), 6 Esp. 71.

(o) Fisher v. Algar (1828), 2 C. & P. 374; Wilkinson v. Ibbett (1860), 2 F. & F. 300.

(p) Bail v. Mellor (1850), 19 L. J. Ex. 279.

(q) Fell v. Whittaker (1871), L. R. 7 Q. B. 120.

(r) Wallis v. Savill (1702), 2 Lutw.

1532; judgment of Parke, B., in Bagge v. Mawby (1853), 8 Ex. 641; Dawson v. Cropp (1845), 1 C. B. 961; Bear v. Caldicott (1843), 4 Q. B. 123. See Smith v. Goodwin (1833), 4 B. & Ad. 413.

(s) Crosse v. Welch (1892), 8 T. L. R. 709, per Lord Esher, M.R.

(t) Hutchins v. Chambers (1758), 1 Burr. p. 589.

(u) Bagge v. Mawby (1853), 8 Ex. 641, p. 649, per Parke, B.; Hutchins v. Chambers (1758), 1 Burr. 589; Owens v. Wynne (1855), 4 E. & B. p. 584. But arrears not included in

A distress withdrawn under an arrangement for payment of the arrears of rent by the tenant is not voluntarily withdrawn, and the landlord may distrain again if the arrangement is not carried out (x). In the event of such second distress, a lodger's goods are not protected by a notice given in the first distress (y).

The landlord may also distrain again if he is prevented by the unlawful act of the tenant from realizing the distress (z); if, for instance, the tenant prevents a purchaser from taking away an article sold under the distress (z). But a warning from a creditor not to sell on the ground that bankruptcy proceedings are imminent is no excuse for not realizing the first distress (a).

A plea that the landlord levied sufficient distress is not a good defence to further proceedings for the rent, unless it is also alleged that the rent was thereby satisfied (b). But if the landlord by consent retains the goods for the rent, this will support a plea of accord and satisfaction (c).

Impounding.

After seizing the goods, the person distraining must impound Where goods Formerly it was necessary to remove the goods from the impounded. premises where they had been seized to a suitable pound (d). The pound might be overt or covert, that is, open overhead or roofed in; though goods liable to suffer damage from the weather could not be put into an open pound (e). But under the Distress for Rent Act, 1737, goods may be impounded on the demised premises, it being by the tenth section of that Act enacted as follows:--

"It shall and may be lawful to and for any person or persons 11 Geo. 2, lawfully taking any distress for any kind of rent, to impound

a first distress can be recovered in a distress for rent accruing due subsequently: Gambrell v. E. of Falmouth (1835), 4 A. & E. 73.

(x) Thwaites v. Wilding (1883), 12 Q. B. D. 4. An arrangement between landlord and tenant for withdrawing a distress cannot be avoided on the ground of duress of goods. If the distress is wrongful, the tenant has his remedy in replevin: Skeute v. Beale (1840), 11 A. & E. 983, 990; Knibbs v. Hall (1794), 1 Esp. 84.

(y) Thwaites v. Wilding, supra.

L.T.

See *supra*, p. 269.

(z) Lee v. Cooke (1857), 2 H. & N. 584; 3 H. & N. 203.

(a) Bagge v. Mawby, supra.

(b) Lingham v. Warren (1820), 2 Br. & B. 36; and see Lear v. Edmonds (1817), 1 B. & A. 157; Hudd v. Ravenor (1821), 2 Br. & B. 662.

(c) Jones v. Sawkins (1847), 5 C. B. 142.

(d) As to the liability of the poundkeeper where the distress was wrongful, see Badkin v. Powell (1776), 2 Cowp. 476.

(e) Co. Litt. 47 b.

c. 19, s. 10 Goods distrained may be secured and sold on premises.

or otherwise secure the distress so made, of what nature or kind soever it may be, in such place or on such part of the premises chargeable with the rent as shall be most convenient for the impounding and securing such distress; and to appraise, sell and dispose of the same upon the premises in like manner and under the like directions and restraints as any person taking a distress for rent may now do off the premises by virtue of [the stats. 2 Will. & M. sess. 1, c. 5, and 4 Geo. 2, c. 28]; and that it shall and may be lawful to and for any person or persons whatsoever to come and go to and from such place and part of the said premises where any distress for rent shall be impounded and secured as aforesaid, in order to view, appraise, and buy, and also in order to carry off or remove the same on account of the purchaser thereof; and that, if any poundbreach or rescous shall be made of any goods or chattels, or stock distrained for rent, and impounded or otherwise secured by virtue of this Act, the person or persons aggrieved thereby shall have the like remedy as in cases of pound-breach or rescous is given by the said statute" (f).

What constitutes impounding.

In order to constitute an impounding, it is not necessary that the whole of the goods distrained should be put together (g). A distress is sufficiently impounded where, with the consent of the tenant, the person distraining makes an inventory of part of the goods distrained, serves it, together with notice of the distress, on the tenant, and leaves a man in possession, but does not disturb, lock up, or remove any of the goods (h).

Furniture.

Furniture may be secured in a room or rooms of the tenant's house, or, if the tenant gives permission, may be left in its ordinary position (i). Where the landlord entered to distrain, and to prevent inconvenience to the tenant, and with the tenant's assent, instead of removing the articles of furniture on which he proposed to distrain, made up from a list given him by the tenant an inventory of the furniture in the house, put a man in possession, and handed to the tenant a notice of distress referring to the inventory, but did not go into the several rooms; this was held to be a distraining of the articles in the inventory, and an

⁽f) Infra, p. 294. (g) Per Lord Campbell, C.J., in Johnson v. Upham (1859), 2 E. & E. at p. 255. See Washborn v. Black (1809), 11 East, 405, note (a).

⁽h) Johnson v. Upham (1859), 2

E. & E. 250.
(i) See Cox v. Painter (1837), 7

C. & P. 767; Washborn v. Black (1809), 11 East, 405, note (a); Tennant v. Field (1857), 8 E. & B. 336.

impounding on the premises (k). Where such permission, as above mentioned, is not given, in common cases a person distraining in a dwelling-house must not take the whole of it in which to place the goods distrained, but must select one room for that purpose, or remove the goods out of the house (1). action of trespass lies against a landlord who, on making a distress for rent, turns the tenant's wife out of possession and keep the premises on which he has impounded his distress (m). It seems, however, that the whole house may be locked up, where it is absolutely necessary for the safe-keeping of the goods distrained (n).

Provision for impounding certain kinds of agricultural produce was made by 2 Will. & M. sess. 1, c. 5.

Under the third section of that Act, persons distraining Corn, straw, sheaves or cocks of corn, or corn loose or in the straw, or hay in any barn or stack or otherwise upon any part of the land, may lock up or detain the same in the place where the same shall be found, until the same shall be replevied; and, in default of replevying the same within the prescribed time (o), may sell the same (p), so as, nevertheless, such corn, grain, or hay be not removed by the person distraining, to the damage of the owner thereof, out of the place where the same shall be found and seized, but be kept there (as impounded) until the same shall be replevied or sold.

Provision for impounding growing crops was made by the Growing Distress for Rent Act, 1737.

Under the eighth section of that Act the landlord, or his bailiff 11 Geo. 2, or other person empowered by him, who has distrained growing crops, may lay up the same when ripe in the barns or other proper place on the premises demised, and in case there shall be no barn or proper place on the premises demised, then in any other barn or proper place which such landlord shall hire or otherwise procure for that purpose, and as near as may be to the premises, and in convenient time may appraise (q), sell, or otherwise dispose of the same towards satisfaction of the rent for which

or hay may be impounded in place where found.

crops.

c. 19, s. 8. Growing crops when ripe, may be impounded in barns on farm.

Painter, supra.

⁽k) Tennant v. Field, supra. (l) Per Parke, B., in Woods v. Durrant (1846), 16 M. & W. at p. 158. (m) Etherton v. Popplewell (1800), 1 East, 139; Smith v. Ashforth (1860), 29 L. J. Ex. 259.

⁽n) See 16 M. & W. p. 158; Cox v.

⁽o) See *infra*, p. 301.

⁽p) See infra, p. 300, as to the repeal of the requirement, in this statute of William & Mary, of appraisement before sale.

⁽q) See infra, p. 300.

Sect. 9.
Notice of place where crops are deposited to be given to tenant.

Cattle.

1 & 2 Ph. & M. c. 12.

Cattle distrained not to be driven out of hundred, &c., where taken, except to pound in same shire not more than three miles distant.

such distress shall have been taken, and of the charges of such distress, appraisement and sale, in the same manner as other goods and chattels may be seized, distrained, and disposed of; the appraisement thereof to be taken when cut, gathered, cured. and made, and not before. Notice of the place where the goods and chattels so distrained are deposited is, within one week after the depositing thereof in such place, to be given to the tenant or left at the last place of his abode; and the tenant can redeem the goods on payment of the arrears of rent, together with the full costs and charges of making the distress and which have been occasioned thereby.

Cattle may be impounded in the byre or field where they are at the time of the distress. Where the distrainor left with the tenant a note stating the number of cattle seized, and on the following morning sent the tenant a notice of the distress, and that the distrainor had impounded the cattle on the premises, it was held that the impounding was complete (r). Or they may, as under the former law, be driven to a pound off the premises, but the distance to which they may be driven is limited by statute.

By the Act 1 & 2 Phil. & Mary, c. 12, it was enacted that "no distress of cattle shall be driven out of the hundred, rape, wapentake, or lathe where such distress is or shall be taken, except it be to a pound overt within the same shire (s), not above three miles distant from the place where the said distress is taken (t); and that no cattle or other goods distrained or taken by way of distress for any manner of cause at one time shall be impounded in several places, whereby the owner or owners of such distress shall be constrained to sue several replevies for the delivery of the said distress so taken at one time; upon pain every person offending contrary to this Act shall forfeit to the party grieved, for every such offence, one hundred shillings and treble damages."

Impounding in another county does not make the distrainer a trespasser, but only subjects him to the penalty in the statute (u).

(r) Thomas v. Harries (1840), 1 M. & Gr. 695. See Castleman v. Hicks (1842), Car. & M. 266.

Ld. Raym. p. 54.

(t) See also 52 Hen. 3, c. 4, and 3 Edw. 1, c. 16, which forbid a distress to be driven out of the county.

⁽s) Where there is a distress on lands in two adjoining counties let in the same lease at an entire rent, the cattle ought to be driven to the same pound: Walter v. Rumball (1696), 1

⁽u) Woodcroft v. Thompson (1683). 3 Lev. 48; Gimbart v. Pelah (1748), 2 Str. 1272.

On this statute only one single penalty can be recovered, though several persons join in committing the offence (x).

Formerly cattle in an open pound had to be maintained by the owner of the cattle at his own peril; but cattle in a close pound by the person distraining (y). Now, whenever cattle are driven off the premises and placed in a pound, the person impounding is bound by 12 & 13 Vict. c. 92 (z), s. 5, to maintain them; and in default of his so doing, any person may supply food and water and may recover the expenses (a). This enactment does not apply to the keeper of the pound in which the animal is impounded (b).

Maintenance of impounded cattle.

Persons impounding animals to supply food and water.

The person distraining must not use the goods or work the Goods cattle he has impounded. If he takes an animal out of the place where it was originally impounded for the purpose of used. making an unlawful use of it, the owner is justified in interfering and recovering possession of the animal (c). Milch cows which have been impounded may, however, be milked by the person distraining (d).

distrained must not be

If the condition of the pound is such that it is unfit to put cattle Injuries to in at the time of the impounding, whether its usual condition be suitable or not, the person distraining is responsible for injury thereby occasioned to the animals (e). But if they die in the pound or escape without any default on the part of the person distraining, he is not answerable, and, it seems, he may distrain again (f).

impounded.

It is usual for the person distraining to leave a man in posses- Abandonment sion of the goods distrained; but the quitting possession of goods by the landlord after he has distrained them is not necessarily an abandonment of the distress (g). Whether the landlord has or has not abandoned the distress is a question of fact to be

of distress.

(x) Partridge v. Naylor (1596), Cro. Eliz. 480; R. v. Clark (1777), 2 Cowp. p. 612.

(y) Co. Litt. 47 b; 51 Hen. 3, stat. 4, expressly empowers the owner to feed impounded cattle.

(z) The Cruelty to Animals Act, 1849.

(a) And, as to recovery of expenses, see further the Cruelty to Animals Act, 1854 (17 & 18 Vict. c. 60), s. 1; Dargan v. Davies (1877), 2 Q. B. D. p. 123; Layton v. Hurry (1846), 8 Q. B. 811.

(b) Dargan v. Davies (1877), 2

Q. B. D. 118.

(c) Smith v. Wright (1861), 6H. & N. 821.

(d) See Bagshawe \mathbf{v} . Goward (1607),

Cro. Jac. at p. 148.

(e) Per Bramwell, B., in Bignell v. Clarke (1860), 5 H. & N. at p. 487; Wilder v. Speer (1838), 8 A. & E. 547.

(f) Vasper v. Eddows (1701), 1 Salk. 248.

(g) Per Wightman, J., in Bannister v. Hyde (1860), 2 E. & E. at p. 631. See Swann v. Falmouth (1828), 8 B. & C. 456.

determined by a jury (h). An abandonment will not be inferred where the broker is forcibly expelled, and regains possession after an interval of three weeks (h)—though in one case a delay of six days was held to be too long (i); or where the man in possession, having quitted the house in which the goods are impounded in order to obtain refreshment, finds on his return the door locked against him by the tenant, and breaks it open for the purpose of re-entering (k); or where the person distraining has permitted the goods of a stranger, who has had no notice of the distress, to be taken off the premises merely for a temporary purpose, and they are subsequently restored by the voluntary act of the person who took them away (1). And the impounding continues notwithstanding that the man in possession leaves the premises for the night or from Saturday to Monday; for indeed, when once goods have been actually impounded on the premises under the Distress for Rent Act, 1737, it is not necessary that anyone should remain in possession of them on the landlord's behalf (m).

Rescue or poundbreach.

Where goods distrained are withdrawn from the control of the distrainor against his will, a rescue or pound-breach is committed (n). But it is no rescue to retake cattle which the distrainor has permitted to escape (o).

A statutory remedy against pound-breach is provided by 2 Will. & M. sess. 1, c. 5.

2 Will. & M. sess. 1, c. 5, s. 4.

Under the fourth section of that statute, upon any pound-breach or rescue of goods distrained for rent, the person grieved thereby may recover treble damages, and (a full and reasonable indemnity as to all costs, charges and expenses incurred in and about the action (p)), against the offender or offenders in any such rescue or pound-breach, or any or either of them, or against the owner of

- (h) Eldridge v. Stacey (1863), 15 C. B. N. S. 458, 459; Bagshawes (Lim.) v. Deacon, [1898] 2 Q. B. 173. See Smith v. Torr (1862), 3 F. & F. 505.
- (i) Russell v. Rider (1834), 6 C. & P. 416.
- (k) Bannister v. Hyde (1860), 2 E. & E. 627.
- (l) Kerby v. Harding (1851), 6 Ex. 234.
- (m) Jones v. Beirstein, [1899] 1 Q. B. 470; affirmed in C. A., [1900] 1 Q. B. 100.
- (n) See Co. Litt. 160 b. As to pound-breach by sale of goods under

distress, see Iredale v. Kendall (1878), 40 L. T. 362; Reddell v. Stowey (1841), 2 Moo. & R. 358; Turner v. Ford (1846), 15 M. & W. 212, 215.

(o) Knowles v. Blake (1829), 5

Bing. 499.

(p) For the treble costs given by the statute, the Limitations of Actions and Costs Act, 1842 (5 & 6 Vict. c. 97), substitutes the words placed within parenthesis marks in the text. See Lawson v. Storey (1694), 1 Ld. Raym. 19. As to the effect of payment into Court in this action, see Story v. Finnis (1851), 6 Ex. 123.

the goods distrained, in case the same be afterwards found to have come to his use or possession (q).

An action in which the plaintiff claims treble damages under the above fourth section is a penal action, and the plaintiff is, therefore, not entitled to discovery of documents (r). The plaintiff need not show his right to distrain (s), and the action will lie without proof of special damage (t). Tender of rent and costs after the impounding is no defence to the action (u).

The landlord may seize again the rescued goods wherever he may happen to find them, if he can do so without breach of the peace, and upon fresh pursuit (x). If he abandons the distress, the tenant may retake it without committing a rescue (y).

(f) Requisites to Sale under Distress.

Previously to the statute 2 Will. & M. sess. 1, c. 5, goods seized by way of distress could only be detained by the landlord as a pledge; since the statute they may either be sold, or kept as a pledge until they are replevied, or the arrears of rent with expenses are paid. The statute does not extend the common law right to seize, but merely adds a power to sell that which the landlord could seize at common law (z).

The first section of the statute provides that where any goods Sale under or chattels are distrained for any rent due upon any lease or contract, and the tenant or owner of the goods so distrained does s. 1. not, within five days (a) next after such distress taken, and notice thereof (with the cause of such taking) left at the chief mansion house or other most notorious place on the premises charged with the rent distrained for, replevy the same with sufficient security, then, after such distress and notice as aforesaid, and expiration of the said five days (a), the person distraining may cause the goods and chattels so distrained to be appraised (b) by

- (q) Also, under 6 & 7 Vict. c. 30, 8. 1, persons guilty of pound-breach are hable to a fine of 51. on conviction before justices.
- (r) Jones v. Jones (1889), 22 Q. B. D. 425; though held otherwise m Castleman v. Hicks (1842), Car. & M. 266.
- (s) Cotsworth v. Betison (1697), 1 Ld. Raym. 104.
- (t) Kemp v. Christmus (1898), 79 L. T. 233.
- (u) Firth v. Purvis (1793), 5 T. R. 432.

- (x) Rich v. Woolley (1831), 7 Bing. 651, per Tindal, C.J., at p. 661.
- (y) Dod ∇ . Monger (1705), 6 Mod. at p. 216.
- (z) Per Farwell, J., in British Mutoscope, &c., Co. v. Homer, [1901] 1 Ch. at p. 674.
 - (a) The time may be extended to
- fifteen days: infra, p. 301.
- (b) Appraisement is now necessary only where required by the tenant or owner of the goods in writing: infra, p. 300.

two (c) appraisers, "according to the best of their understandings," and after such appraisement may lawfully sell the goods and chattels distrained for the best price that can be got for the same, towards satisfaction of the rent for which the said goods and chattels are distrained, and of the charges of such distress, appraisement and sale.

The statute is permissive and not compulsory (d), and no action lies for not selling (e).

Inventory and notice.

If it is intended to sell the goods distrained, an inventory of them must be made, which should express clearly and with certainty what goods are taken, and at the foot of the inventory there must follow the statutory notice of the distress in writing (f), stating the cause of taking, and also, if the goods are distrained under the Distress for Rent Act, 1737 (g), the place where they are lodged or deposited (g).

- (c) The statute contained words requiring the sheriff or under-sheriff of the county or the constable of the parish to assist in the distress, and to administer the oath to the appraisers, who were required to be sworn. These words are repealed, and no oath is now necessary for the appraisers: 35 & 36 Vict. c. 92, s. 13.
- (d) But as to corn and growing crops, see *Piggott* v. *Birtles* (1836), 1 M. & W. p. 448.
- (e) Hudd v. Ravenor (1821), 2 Br. & B. 662; Lear v. Edmonds (1817), 1 B. & A. 157.
- (f) Wilson v. Nightingale (1846), 8 Q. B. 1034.

(g) 11 Geo. II. c. 19, s. 9. The inventory and notice may be in the following forms:—

An inventory of the goods and chattels distrained by [A. B., of —, as bailiff of and for] E. F., of —, this — day of —, 19—, in and upon the house [farm] and premises in the occupation of C. D., situate at —, in the parish of —, in the county of —, for £—, being the amount of [one half-year's] rent due to the said E. F. in respect of the same premises on the —— day of ——, 19—.

Goods in the Dwelling-house.

Kitchen.—One table [describe simi-larly the furniture seized in each room].

Cattle in the Fields.

Field called Thorncroft. — One white milch cow, one bay horse, six Leicester ewes [describe similarly the cattle seized in each field].

Growing Crops.

Field called Holme.—About three acres of barley [describe similarly the crops in each field].

To Mr. C. D.

Take notice that I [as bailiff of and for Mr. E. F., your landlord] have this day distrained, on the premises above mentioned, the goods and chattels specified in the above inventory, for \pounds —, being the amount of [one half-year's] rent due to [me, or the said E. F.] in respect of the said premises, on the — day of —, 19—, [which goods are secured upon the said premises, or, if removed, are lodged or deposited at ——]. And unless you pay the said rent, together with the charges of distraining for the same, within five days (or such other number of days not exceeding 15 as you may name in a request in writing in that behalf) from the service hereof, the said goods and chattels will be sold according to isw [in a distress of growing crops, after the word "same," say, the said growing crops, when ripe, will be cut, gathered, cured and laid up in the barn or other proper place on the said premises, and in convenient time sold towards satisfaction of the said

In one case it was held, though with reluctance, that an inventory specifying only one article, followed by an "&c." and the words "and any other goods and effects that may be found in or about the said premises to pay the said rent and expenses of this distress," was sufficient to cover all the goods on the premises (h); but it is not safe to leave the list so indefinite, and words in a notice purporting to cover all goods on the premises that might be required to satisfy the rent and expenses were held to be too vague to justify the sale of the goods of a stranger which had been deposited on the premises (i).

The landlord is not bound by the statement of the cause of Statement of taking contained in the notice, since he may distrain for one cause and afterwards, in a replevin or other action, may avow or or justify for a different cause (k). Thus if a person having authority to distrain for rent due to another says at the time that he is distraining for rent due to himself, he may nevertheless justify as bailiff for the other (l). It is not necessary to specify in the notice when the rent for which the distress is made became due(m).

The want of notice does not render a distress invalid, but if the person distraining proceeds to sell the goods distrained (n), he will be liable to an action for irregular distress. The omission to state in the notice that the goods are impounded does not make the impounding void (o).

The inventory and notice may be served personally on the tenant, notwithstanding the direction of the statute that they shall be left at the chief mansion house or other most notorious place on the premises (p).

rent, and of the charges of such distress according to law].

Dated, &c.

E. F. for A. B., bailiff of the said E. F.].

(h) Wakeman v. Lindsey (1850), 14 Q. B. 625.

(i) Kerby v. Harding (1851), 6 Ex. 234.

(k) Gwinnet v. Phillips (1790), 3 T. R. 643; Crowther v. Ramsbottom (1798), 7 T. R. 654, 658. Judgment in Etherton v. Popplewell (1800), 1 East, at p. 142. See Phillips v. Whitsed (1860), 2 E. & E. 804.

(l) Wootley v. Gregory (1828), 2

Y. & J. 536; Trent v. Hunt (1853), 9 Ex. 14; though a notice stating rent to be due to a person who was clerk of a corporation was insufficient where the rent was due to the corporation: Strong v. Elliott (Exeter County Court, Serjeant Petersdorff, 7 May, 1868, 12 Sol. Journ. 651).

(m) Moss v. Gallimore (1779), 1 Doug. 279.

(n) Trent ∇ . Hunt (1853), 9 Ex. 14. (o) Tennant v. Field (1857), 8 E.

& B. 336. (p) Walter v. Rumball (1696), 1 Ld. Raym. 53.

distress.

Tender of rent and expenses before impounding. After the goods have been seized, but before they are impounded, the tenant may tender the amount of rent actually due, and the expenses of the distress, either to the landlord (q) or his agent or bailiff (r); and after such tender it is illegal to proceed with the distress, or to detain the goods distrained (s). A man left by the bailiff in possession has, however, no implied authority to receive a tender of the rent (t). In this respect a subordinate of the bailiff differs from the bailiff himself. It would seem that the landlord cannot withdraw authority to receive a tender from a bailiff who conducts the distress without the personal intervention of the landlord (u). A solicitor who gives an undertaking to pay the rent to the value of the goods distrained renders himself personally liable (x).

Tender after impounding. Formerly a tender after goods had been impounded did not render the subsequent detention of them illegal, for then the case was put to the trial of the law to be there determined (y). But since the statute 2 Will. & M. sess. 1, c. 5, in giving the right of sale, at the same time gave the tenant a period of five days' grace, it has been held upon the equity of the statute that during these five (z) days the tenant may make a tender of the rent and expenses, and so stop the sale; and this right is not prevented by the impounding of the goods (a). Now that the goods can be impounded on the premises, the distraining and the impounding are usually very nearly, if not quite, concurrent (b).

It appears that a landlord who, after accepting a tender, still remains in possession of the goods, is not liable in trespass (c), unless he actually interferes with them, as by removing them from the premises (d). But if he refuses to deliver up the

(q) Smith v. Goodwin (1833), 4 B. & Ad. 413.

(r) Hatch v. Hale (1850), 15 Q. B. 10. See Pilkington v. Hastings (1601), Cro. Eliz. 813; Browne v. Powell (1827), 4 Bing. 230.

(s) Vertue v. Beasley (1831), 1 Moo. & R. 21; Evans v. Elliott (1836), 5 A. & E. 142; Holland v. Bird (1833), 10 Bing. 15; Loring v. Warburton (1858), E. B. & E. 507.

(t) Boulton v. Reynolds (1859), 2 E. & E. 369.

(u) Hatch v. Hale, supra; Boulton v. Reynolds, supra.

(x) Burrell v. Jones (1819), 3 B. &

A. 47; Cordery on Solicitors, 3rd ed. p. 150.

(y) Six Carpenters' Case (1611). 8
Rep. p. 147. See Ladd v. Thomas
(1840), 12 A. & E. 117; Tennant v.
Field (1857), 8 E. & B. 336; Thomas
v. Harries (1840), 1 M. & Gr. 695.

(z) Now fifteen; infra, p. 301. (a) Johnson v. Upham (1859), 2 E. & E. 250; overruling Ellis v. Taylor (1841), 8 M. & W. 415.

(b) Johnson v. Upham, supra.
(c) West v. Nibbs (1847), 4 C. B.
172.

(d) Vertue v. Beasley (1831). 1 Moo. & R. 21.

goods to the tenant; he will be liable in trover for the conversion (e).

When a lodger has served the declaration and inventory Tender required by 34 & 35 Vict. c. 79 (f), s. 1, a tender by him to the superior landlord or his bailiff of the rent due to the lodger's immediate landlord, at any time before the goods distrained have been actually sold (g), will render any further proceedings in the distress as to the lodger's goods illegal (h).

by lodger.

In the case of a distress upon a holding to which the Tender by Agricultural Holdings Acts, 1883 and 1900, apply (i), a tender by the owner of the live stock taken in by the tenant to agist, at any time before such live stock is sold under the distress, of the price agreed to be paid for the feeding, or of the amount of such price remaining unpaid to the tenant, renders any further proceedings in the distress, as regards such live stock, illegal (j).

agisted cattle.

In order to constitute a legal tender it is necessary that the Tender must sum actually due for rent and expenses of the distress should be tional. unconditionally offered to the landlord (k), and the tenant cannot require the landlord to admit that no more is due than the amount of the tender (l). But the tenant need not himself admit that the sum tendered is due, and a tender is good though made under protest (m). Where the tenant in making the tender said, "Here is your quarter's rent," it was held that this did not require the landlord to make any admission of the amount due as a condition of receiving the money, and hence the tender was good(n).

In the case of growing crops a tender may, under the Distress Tender on for Rent Act, 1737, be made at any time before the crops are distress of The ninth section of that Act provides that if, after any distress for arrears of rent taken of corn, grass, hops, roots,

growing crops. 11 Geo. 2,

c. 19, s. 9.

- (e) West v. Nibbs (1847), 4 C. B. 172.
- (f) The Lodgers' Goods Protection Act, 1871, supra, p. 268.
- (g) Or before the date at which they could be lawfully sold: Sharp v. Fowle (1884), 12 Q. B. D. 385.
- (h) As to the remedy of the lodger against the superior landlord, see supra, p. 268.
- (i) See 46 & 47 Vict. c. 61, s. 54; and, as to these Acts generally, infra, Chap. VII., Sect. 4.

- (j) See sect. 45 of the Agric. Hold. Act, 1883, supra, pp. 264, 267.
- (k) See Finch ∇ . Miller (1848), 5 C. B. 428.
- (1) Bowen v. Owen (1847), 11 Q. B. 130.
- (m) Manning v. Lunn (1845), 2 C. & K. 13. Cf. Greenwood v. Sutcliffe, [1892] 1 Ch. 1.
- (n) Jones v. Bridgman (1879), 39 L. T. 500; overruling M. of Hastings v. Thorley (1838), 8 C. & P. 573.

On payment or tender of rent and costs before crops are cut, distress to cease. fruits, pulse or other product which shall be growing, and at any time before the same shall be ripe and cut, cured or gathered, the tenant, his executors, administrators or assigns, shall pay or cause to be paid to the landlord, or to the steward or other person usually employed to receive the rent of such landlord, the whole rent which shall be then in arrear, together with the full costs and charges of making such distress, then upon such payment or lawful tender thereof actually made, whereby the end of such distress will be fully answered, the same shall cease, and the corn, &c., so distrained shall be delivered up to the tenant, his executors, administrators or assigns.

Appraisement abolished save where expressly called for. So much of the statute 2 Will. & M. sess. 1, c. 5, as required appraisement before sale of the goods distrained has been repealed (o), except in cases where the tenant or owner of the goods and chattels by writing requires such appraisement to be made, and the landlord, or other person levying a distress, may, except as aforesaid, sell the goods and chattels distrained without causing them to be previously appraised. The costs and expenses of appraisement, when required by the tenant or owner, are to be borne and paid by him.

Appraisement, therefore, now takes place only when the tenant or owner of the chattels makes a requisition for it in writing. The appraisers need not be sworn, but two appraisers are necessary, even though the rent distrained for does not exceed 20l.(p).

The appraisers must be reasonably competent, but need not be professional appraisers (q). The landlord or his bailiff must not appraise the goods (r), and a sale is irregular if an appraiser has acted as an agent for the landlord in the distress (s). The appraisement of growing crops distrained under the Distress for Rent Act, 1737 (t), s. 8, must not be taken before the crops are cut and gathered (u).

Having valued the goods, the appraisers usually indorse on a copy of the inventory a memorandum of their appraisement,

- (o) Sc., by the Law of Distress Amendment Act, 1888 (51 & 52 Vict. c. 21), s. 5.
- (p) Allen v. Flicker (1839), 10 A. & E. 640: overruling Fletcher v. Saunders (1834), 1 Moo. & Rob. 375; cf. 57 Geo. 3, c. 93, Schedule.
- (q) Roden v. Eyton (1848), 6 C. B. 427.
- (r) Andrews v. Russell (1786), Bull. N. P. 81 d; Westwood v. Cowne (1816), 1 Stark. 172; Lyon v. Weldon (1824), 2 Bing. 334.
- (s) Rocke v. Hills (1887), 3 T. L. R. 298.
 - (t) 11 Geo. 2, c. 19.
 - (u) See supra, p. 291.

which must be duly stamped (x). The duty on appraisements (y)is as follows:—

Where the amount of the appraisement does not exceed 51. 0 Where the amount of the appraisement— Exceeds 51. and does not exceed 101. 0 10 20 0 0 20 **30** 0 ,, 0 **30 40** 0 2 6 **50 40** 0 **50** 0 100 0 ,, 100 200 10 0 ,, 200 500 15 0 0 ,, ,, 500 1 0 0 ,,

(g) SALE UNDER THE DISTRESS.

Under the statute 2 Will. & M. sess. 1, c. 5, the person dis- Time for training must allow the tenant or owner of the goods five days after the distress is taken wherein he may either tender the rent and costs of distress or replevy the goods, and on the expiration of this period he may proceed to sell (z). The tenant's right to replevy continues up to the time of sale, and is not stopped by removal or appraisement (a). It has been held that the tenant is entitled to five clear days—that is, five times twenty-four hours—and where the distress was taken on Friday at 2 p.m. a sale at 11 in the morning of the following Wednesday was But the correct mode of reckoning is to exclude altogether the day of seizure, and then allow five more clear days (c); so that in the case just mentioned the sale should have been postponed till the Thursday.

The sixth section of the Law of Distress Amendment Act, 1888, Extension to

fifteen days.

(x) Form of Appraisement to be indorsed on Inventory.

We, the undersigned G. H. and J. K., according to the best of our understandings, having viewed the goods and chattels specified in the within-written inventory, do appraise the same at the sum of —— pounds.

As witness our hands this — day of —, 19—.

G. H. J. K.

- (y) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 24; Schedule.
- (z) The county court register should be searched to see that the goods have not been replevied.

(a) Jacob v. King (1814), 5 Taunt. 451.

- (b) Harper v. Taswell (1833), 6 C. & P. 166.
- (c) Robinson v. Waddington (1849), 13 Q. B. 753.

provides as follows for the extension of the period of five days to fifteen on the written request of the tenant:—

51 & 52 Vict. c. 21, s. 6.

"The period of five days provided in the said Act of William and Mary, chapter five, within which the tenant or owner of goods and chattels distrained may replevy the same, shall be extended to a period of not more than fifteen days if the tenant or such owner make a request in writing in that behalf to the landlord or other person levying the distress (d), and also give security for any additional cost that may be occasioned by such extension of time: provided that the landlord or person levying the distress may, at the written request, or with the written consent, of the tenant or such owner as aforesaid, sell the goods and chattels distrained, or part of them, at any time before the expiration of such extended period as aforesaid."

Price.

Order of sale.

If the goods are not sold for the best price, the tenant may bring an action against the landlord, and go into evidence to show, for instance, that they were allowed to stand in the rain, and were improperly lotted (e); but goods sold at the appraised value are presumed to have been sold for the best price (f). It seems that there is no order required by law to be observed in the sale of goods under a distress. If the landlord distrains, among other goods, his tenant's cattle and beasts of the plough (g), he is not bound to sell the other goods first; and although it turns out after the sale (judging by the result) that there would have been sufficient to satisfy the rent and expenses without selling the cattle, the distress is not thereby proved to be illegal, if there was ground for supposing, from the appraisement of competent persons, made at the time of the seizure, that, without taking the cattle, the amount of the rent and expenses would not be realized (h). Where the goods of a lodger are distrained

To Mr. A. B. [landlord or person levying the distress].

I hereby request you to extend the period within which I may replevy the goods and chattels which you have distrained at the —— Farm, in the parish of ——, in the county of ——, to a period of [specify the number of days, not exceeding fifteen days]. And I hereby give you notice that I propose as sureties for any additional costs that may be

G. H. [tenant or owner of the goods distrained].

(e) Poynter v. Buckley (1833), 5 C. & P. 512.

(f) Walter v. Rumball (1696), 1 Ld. Raym. at p. 55.

(g) See supra, p. 267.

(h) Jenner v. Yolland (1818), 6 Price, 3.

⁽d) The following is a form of request:—

occasioned by such extension of time Mr. C. D., of ——, in the county of ——, farmer, and Mr. E. F., of ——, in the county of ——, gentleman.

Deted the —— dev of —— 19—

together with the goods of the tenant, and are sold first, after notice from the lodger, and the tenant's goods turn out to be sufficient to satisfy the rent and charges, the lodger is entitled to sue for an excessive distress (i).

A landlord cannot impose on the sale of goods under a distress Sale must any conditions which must necessarily prevent the goods from to condition. being sold at the best price which can be got (k). Hence a landlord who has distrained hay and straw prohibited by covenant from being carried off the premises will render himself liable to an action for not selling at the best price, if he sells such distress subject to a condition that the purchaser shall consume it on the premises, by reason whereof it produces less than the usual price (l). The Sale of Farming Stock Act, 1816(m), prohibiting in various cases the sale of crops in any other manner than the tenant could have sold them, does not apply to the sale by a landlord of a distress (n).

A licence is not implied by law to the purchaser of goods under Entry by a distress to enter upon the tenant's premises and take them away, though they may have remained there with the tenant's consent (o). But it has been held that where by the conditions of sale of goods under a distress, to which conditions the tenant was a party, the buyer was to be allowed to enter and take the goods, the tenant could not, after the sale, revoke the licence (p).

The fifth section of the Law of Distress Amendment Act, Where sale 1888 (q), provides, that for the purposes of sale the goods and chattels distrained shall, at the request in writing of the tenant or owner of such goods and chattels (r), be removed to a public auction room or to some other fit and proper place specified

may be made.

(i) Wilkinson v. Ibbett (1860), 2 supra, p. 289. F. & F. 300; and as to lodgers' goods, see *supra*, p. 268.

(k) Hawkins v. Walrond (1876), 1 C. P. D. 280, p. 282.

(l) Hawkins v. Walrond (1876), 1 C. P. D. 280; Ridgway v. Stafford (1851), 6 Ex. 404; Jones v. Hamp (1840), cited in 10 M. & W. 710. See Roden v. Eyton (1848), 6 C. B. 427; Frusher v. Lee (1842), 10 M. & W. 709. Abbey v. Petch (1841), 8 M. & W. 419, contrà, is overruled.

(m) 56 Geo. 3, c. 50; infra, p. 373. (n) Hawkins v. Walrond, supra.

(o) Williams v. Morris (1841), 8 M. & W. 488. But a statutory right exists under 11 Geo. 2, c. 19, s. 10,

(p) Wood v. Marley (1839), 11 A. & E. 34. But see 8 M. & W. p. 493.

(q) 51 & 52 Vict. c. 21.

(r) The following is a form of request:—

To Mr. A. B. [landlord or person levying the distress.

I hereby request you to remove the goods and chattels distrained by you at the —— Farm, in the parish of —, in the county of —, to a public auction room [or, if desired, specify some fit and proper place] for the purposes of sale.

Dated the —— day of ——, 19—. C. D. [tenant or owner of the goods distrained.]

in such request, and be there sold. The costs and expenses attending any such removal, and any damage to the goods and chattels arising therefrom, are to be borne and paid by the person requesting the removal.

Subject to the above enactment, the sale may, in general, be made either upon the demised premises, if the goods are impounded there, or at any other place. But corn, grain or hay (s) must not be "removed by the person or persons distraining, to the damage of the owner thereof, out of the place where the same shall be found and seized, but be kept there, as impounded, until the same shall be replevied or sold."

Stat. 2 Will. & M. sess. 1, c. 5, s. 2. Corn, &c., not to be removed.

Property in goods distrained.

Until the goods distrained are sold, the property in them remains in the tenant (t), subject to the right of the landlord to detain or sell them. It has been said that the person distraining does not acquire even the possession of the cattle or things distrained, since they are in the custody of the law (u). But though this may be doubted, the right of possession according to the ordinary rule attaches to the right of property, and if the landlord loses control of the goods and does not forthwith recapture them, the real owner may maintain trover for them (x).

To whom sale may be made.

Where the goods distrained are of small value, the appraisers sometimes take them at their own valuation, a receipt written at the foot of the inventory being considered a sufficient discharge(y). But this practice is so obviously unjust to the tenant that it should not be adopted in any case where the goods can be profitably disposed of by public auction. The landlord is not entitled to take the goods at the appraised value. If he does, the transaction will not be considered as a sale, and the property in the goods will not be divested from the tenant or owner; unless, indeed, they belong to the tenant, and are so taken with his consent (z). Further, the sale of distrained goods under the statute 2 Will. & M. sess. 1, c. 5, must be a sale to a third person; and a sale to the landlord, or to an agent for him, 18 really no sale at all, and does not pass the property (a).

(s) See *supra*, p. 291.

(u) R. v. Cotton (1751), Parker, at

p. 121.

(x) Turner v. Ford (1846), 15 M. &

W. 212.

(y) Cf. Bullen on Distress, 2nd ed. 193.

(z) King v. England (1864), 4 B. & S. 782, 786.

(a) Moore, Nettlefold & Co. V. Singer Manufacturing Co., [1903] 2 K. B. 168, 169; affirmed [1904] 1 K. B. 820.

⁽t) King v. England (1864), 4 B. & S. 782; Turner v. Ford (1846), 15 M. & W. 212; Iredale v. Kendall (1878), 40 L. T. 362. See Moore v. Pyrke (1809), 11 East, 52.

The sale cannot be made before the expiration of five clear When sale days of the seizure, or of the extended period of fifteen days under sect. 6 of the Law of Distress Amendment Act, 1888 (b). If it is made before the expiration of whichever period is applicable, and actual damage is thereby occasioned to the tenant, he may maintain an action against the landlord (c): but the tenant is not entitled to a verdict unless he proves actual damage (c). It is lawful for the landlord, and those acting under him, to remain more than the five days or fifteen days on the premises for the purpose of selling the goods distrained (d). If, however, the sale is not made, or the goods are not removed from the premises, within a reasonable time (d), after the expiration of the five or fifteen days, the landlord will be liable to an action of trespass by the tenant (e), at any rate, if he removes the goods after that time (f). It must be left to the jury to say what is a reasonable time; in one case, where the distress was made on April 14th, and the sale on April 27th, the jury found that the sale was made within a reasonable time (d). A lodger may maintain this action against the superior landlord (g).

The sale is often postponed at the request of the tenant (h), Postponement from whom the landlord should invariably obtain a written consent to his remaining on the premises (i). But a payment of broker's charges to postpone the sale is not voluntary, and, if they are irregular, an action will lie to recover the amount (k). The tenant does not by making an arrangement as to the sale waive his right of action for an excessive distress (l).

may be made.

(b) Supra, p. 301.

(c) Lucas v. Tarleton (1858), 3 H. & N. 116; Rodgers v. Parker (1856), 18 C. B. 112; infra, p. 316.

(d) Pitt v. Shew (1821), 4 B. & A. 208.

(e) Griffin v. Scott (1727), 2 Ld. Kaym. 1424.

(f) Winterbourne \mathbf{v} . Morgan (1809), 11 East, 395.

(y) Sharp \forall . Fowle (1884), 12 Q. B. D. 385.

(h) See Harrison v. Barry (1819), 7 Price, 690; Fisher v. Algar (1826), 2 C. & P. 374.

(i) Form of Consent. To [Mr. A. B., bailiff of] Mr. E. F. I hereby consent that you shall remain in possession of the goods and chattels which you have distrained for rent upon the premises in my occupation, and shall keep the said goods and chattels in the place where they are now impounded for the space of —— days from the date hereof, in order to enable me to discharge the said rent and costs of the distress. And I hereby agree that the expenses of keeping possession of the said goods and chattels for the space aforesaid shall be deemed to be part of the charges of the said distress, and shall be recoverable as such.

Witness my hand this —— day of ——, 19—.

C. D.

(k) Hills v. Street (1828), 5 Bing.

(I) Willoughby v. Backhouse (1824), 2 B. & C. 821.

undertaking for the continuance of the distress if the landlord consents not to sell does not require a stamp (m). The request of the tenant will justify the landlord in detaining the goods of a lodger upon the premises beyond the proper time of selling, if he did not know which were the goods of the lodger, and which were those of the tenant (n).

Growing crops.

Standing corn and growing crops cannot legally be sold until they are ripe (o), and until they are ripe the tenant may tender the rent. And though they are meant to be included in a sale, there is in fact no sale, and, so far as this goes, no cause of action (p). Hence, if no damage has been sustained by the premature sale, the tenant cannot recover even nominal damages (q).

Surplus proceeds of sale.

Under the statute 2 Will. & M. sess. 1, c. 5, s. 2, the surplus proceeds of sale, if any—that is, what remained after payment of the rent and the reasonable charges of the distress (r)—were to be left in the hands of the sheriff, under-sheriff, or constable assisting at the sale, for the owner's use. If the surplus was not left in the hands of the officer, the remedy of the tenant was not for money had and received, but by an action on the case for not dealing with the surplus according to the statute (s). Now that the assistance of the above officers is no longer necessary (t), the proper course is for the distrainor to pay the surplus proceeds to the tenant direct. If the goods have been removed, any surplus unsold should be returned to the premises from which they were taken (u).

A sham distress to defraud an execution creditor is good as between landlord and tenant, and the tenant cannot recover the proceeds of sale (x).

(h) Costs of Distress.

Fees under Distress for Rent Rules, 1888. By 57 Geo. 3, c. 93 (y), s. 1, the costs of distresses under 20l. were limited to the scale contained in the schedule to that Act:

(m) Fishwick v. Milnes (1850), 4 Ex. 825.

(n) Fisher v. Algar (1826), 2 C. & P. 374.

(o) 11 Geo. 2, c. 19, s. 8; supra, p. 291.

(p) Owen v. Legh (1820), 3 B. & A. 470.

(q) Rodgers v. Parker (1856), 18 C. B. 112. See Proudlove v. Twemlow (1833), 1 Cr. & M. 326, as explained

in Rodgers v. Parker.

(r) Lyon v. Tomkies (1836), 1 M. & W. 603.

(s) Yates v. Eastwood (1851), 6 Ex. 805.

(t) Supra, p. 296, note (c). (u) Evans v. Wright (1857), 2 H. & N. 527.

(x) Sims v. Tuffs (1834), 6 C. & P. 207.

(y) The Distress (Costs) Act, 1817.

and by sect. 2, in the case of excessive charges being made, the party aggrieved could obtain from a justice of the peace an order for payment of treble the amount of the moneys unlawfully taken, together with full costs. These enactments, though not repealed, are practically superseded by the table of fees, charges, and expenses appended to the Distress for Rent Rules, 1888 (z). Every bailiff levying a distress is bound, on the request of the tenant, to produce to him his certificate and a copy of his charges. A landlord who does not personally interfere in the distress is not liable for a breach of this requirement (a). The charge authorized by 1 & 2 Ph. & M. c. 12, s. 2, for keeping the chattels distrained in a public pound (b), could not now, it seems, be added to the charges in the table.

(i) Remedies for Illegal Distresses.

A distress is illegal in the following cases: - Where no rent Instances of for which a distress can be made is due and in arrear (c); where distress. no tenancy exists between the owner of the goods and the person distraining (d); where a valid tender of the rent due has been made before seizure (e); where the distress is made before sunrise or after sunset (f); where an unlawful entry is made (g); where goods are seized which are privileged from distress (h), or which are not upon the demised premises (i); where a second distress is vexatiously made for rent previously distrained for (k). The remedies for an illegal distress are by (1) rescue; (2) replevin; and (3) action.

- (z) The percentage "for levying distress" goes to the bailiff: Phillipps v. Rees (1889), 24 Q. B. D. 17. The charge for "man in possession" can only be made where the actual possession continues; it is not justified by "walking possession": Lumsden v. Burnett, [1898] 2 Q. B. 177; Duncombe v. Hicks (referred to, 42 Sol. Journ. p. 393). It is improper to incur the expense of a man in possession where growing crops are concerned; it is sufficient to put up a public notice: Ex parte Arnison (1868), L. R. 3 Ex. 56. If the rent 18 paid and the landlord withdraws, the bailiff cannot sell to raise money for his fees: Harding v. Hall (1866), 14 L. T. 410.
 - (a) See Hart v. Leach (1836), 1

- M. & W. 560, decided on 57 Geo. 3, c. 93.
- (b) See Child v. Chamberlain (1834), 5 B. & Ad. p. 1051.
- (c) See Lockier v. Paterson (1844), 1 C. & K. 271; supra, pp. 247, 249; infra, p. 313.
- (d) Supra, p. 250. See Yutes v. Tearle (1844), 6 Q. B. 282.
- (e) Supra, p. 283. A tender of rent and expenses after seizure, but before impounding, renders the subsequent detention of the goods illegal: supra, p. 298.
 - (f) Supra, p. 277.
- (g) Attack v. Bramwell (1863), 3 B. & S. 520; supra, p. 283.
 - (h) Supra, pp. 257—266.
 - (i) Supra, p. 270.
 - (k) Supra, p. 288.

Rescue.

Rescue.

In the above cases the tenant may lawfully rescue the goods, or take them out of the hands of the person distraining, at any time before they are impounded (l), provided this can be done without occasioning a breach of the peace.

Replevin.

Replevin.

The tenant may obtain restitution of goods wrongfully taken out of his possession under an *illegal* distress by suing out a replevin, which he may do at any time before the goods distrained are sold, although they may have been removed from the demised premises or appraised (m); and replevin also lies for detaining the goods after tender and before impounding (n).

Replevin is a procedure in which the owner of the goods upon application, formerly to the sheriff, and now to the bailiff of the county court in the district of which the distress was taken, and upon finding sufficient security for the alleged rent and the costs, obtains redelivery of the goods, and then tries the right of the landlord to distrain in an action (a). The term "replevin" is applied both to the redelivery of the goods and to the action in which the right is tried.

For replevin distress must be wrongful.

The procedure is applicable only when the distress is altogether wrongful, as where no rent whatever is due, or where all arrears had been sufficiently tendered beforehand. If anything is in arrear, so that the distress is not wholly tortious, and the injury is an excessive seizure or some irregularity in the distress, the remedy is by an action and not by replevin (p). Moreover, replevin lies only for what may by law be distrained (q), and it is not applicable, therefore, to cases where fixtures, deeds, or animals $ferce\ nature$ are distrained (r). To prevent a sale of goods

(m) Jacob v. King (1814), 5 Taunt. 451.

(n) Evans v. Elliott (1836), 5 A. & E. 142.

(a) See Bullen on Distress, 2nd ed., p. 277; Co. Litt. 145 b; and as to

nature of replevin, see judgment of Coleridge, J., in *Mennie* v. *Blake* (1856), 6 E. & B. 842; and of Bovill, C.J., in *Gibbs* v. *Cruikshank* (1873), L. R. 8 C. P. 454.

(p) Bullen on Distress, 2nd ed., p. 278.

(q) Bac. Abr. "Replevin" (F.). (r) Niblet v. Smith (1792), 4 T. R. 594; Darby v. Harris (1841), 10 L. J. Q. B. at p. 295.

⁽l) Per Bramwell, B. (1859), in Keen v. Priest, 4 H. & N. at p. 240. See Co. Litt. 160 b; Bevil's Case (1583), 4 Rep. p. 11 b; Cotsworth v. Bettison (1697), 1 Ld. Raym. 104.

under a distress the notice of replevin should be regular and be properly served (s).

Replevin is a personal action (t), founded upon the right of Action of property. It has been said that a possessory right in the plaintiff will not support the action (u). But special property, such as that of a bailee, is sufficient (x), and either the bailor or the bailee may sue (x). Since replevin affirms the right of property, it may be brought by the executors of the tenant on whose goods the distress was made (y). Apparently the plaintiff cannot put in issue both the fact of the tenancy and of rent being in arrear, and the authority of the actual distrainor to distrain as bailiff (z). A plea of a former distress for the same rent without adding that the rent was satisfied, is bad (a).

If the chattels distrained have been delivered to the plaintiff Damages. on the replevin, as is the usual practice, the damages recoverable by him are generally confined to the expenses of the replevin bond (b). But, in addition, the plaintiff is entitled to recover any special damage which he has suffered in consequence of the wrongful taking (c), including damages for annoyance and injury to credit (d); and after judgment in replevin, whether special damage is recovered or no, he is precluded from bringing an action of trespass to the goods, though not from bringing an action for trespass to the land (e).

Formerly, as already observed, the security was given to the Proceedings sheriff, but now the powers and responsibilities of the sheriff with respect to replevin bonds and replevins have been abolished (f and the procedure is regulated by the County Courts Act, 1888 (g). Under sect. 134 the registrar of the county court of the district in which the goods subject to replevin are taken is empowered to

in replevin

```
(8) See Cuckson v. Winter (1828), 2
M. & Ry. 313.
```

(g) 51 & 52 Vict. c. 43.

⁽t) Eaton v. Southby (1738), Willes, p. 134.

⁽u) Templeman \forall . Case (1712), 10 Mod. 24.

⁽x) Bac. Abr. "Replevin" (F.).

⁽y) Arundell v. Trevill (1662), 1 Sid. 81.

⁽z) Trent v. Hunt (1853), 9 Ex.

⁽a) Hudd v. Ravenor (1821), 2 Br. & B. 662; supra, p. 289.

⁽b) Roscoe's Nisi Prius Evidence, 17th ed. 1076.

⁽c) Gibbs v. Cruikshank (1873), L. R. 8 C. P. 454.

⁽d) Smith v. Enright, $\lceil 1893 \rceil$ 63 L. J. Q. B. 220.

⁽e) Gibbs v. Cruikshank, supra. Cf. Phillips v. Berryman (1783), 3 Dougl. 286; 1 Selw. N. P. 679. See Pease v. Chaytor (1861), 1 B. & S. 658; 3 B. & S. 620.

⁽f) See 11 Geo. 2, c 19, s. 23. As to the old proceedings in replevin, see Bullen on Distress, 1st ed., pp. 245—249.

approve replevin bonds, and to grant replevin on proper security being given.

Action in High Court.

If the replevisor wishes to commence proceedings in the High Court, the condition of the bond (h) is that he shall commence an action of replevin against the seizor within one week from the date of the bond, and prosecute the same "with effect and without delay," and, unless judgment be obtained by default, shall prove before the High Court that he had good ground for believing either that the title to some corporeal or incorporeal hereditament, the rent or value of which exceeded 20l. a year, or to some toll, market, fair, or franchise, was in question, or that the rent or the value of the goods seized exceeded 20l., and that he will return the goods, if a return is adjudged (i).

Action in county court.

If the replevisor wishes to commence proceedings in the county court, the condition of the bond is that he shall commence an action of replevin in the county court within one month, and prosecute the action "with effect and without delay," and also make return of the goods, if a return is adjudged (k). The county court can try replevin though title is in question (l).

Replevin bond.

The bond may be secured by sureties or by deposit in Court(m). The amount must be sufficient to cover the alleged rent and the probable costs in the High Court or the county court, as the case may be (n). The amount recoverable on the bond is the rent in arrear at the time of distress and costs (o); but in any case not exceeding the penalty in the bond and costs (p). A distress on the same goods for subsequent rent does not discharge the sureties (q).

Condition of replevin bond.

The action is not prosecuted with effect unless the party on whose behalf the security is given is successful (r); or, as it has been more cautiously put, carries it to a not unsuccessful termination (s). But if the action is stopped by the death of the

(h) For form of bond, see Form 287 in the Appendix to the County Court Rules, 1903. A marginal note to Form 287 states that "this bond does not require a stamp."

(i) County Courts Act, 1888, s. 135.

(k) See County Courts Act, 1888, s. 136, and Form 288 in the above mentioned Appendix.

(l) Reg. v. Raines (1853), 1 E. & B. 855; Fordham v. Akers (1863), 4 B. & S. 578.

(m) Sects. 108, 109.

(n) Sects. 135, 136.

- (o) Ward v. Henley (1825), 1 Y. & J. 285.
- (p) Hefford v. Alger (1808), 1 Taunt. 218; Branscombe v. Scarbrough (1844), 6 Q. B. 13. See Dis v. Groom (1880), 5 Ex. D. 91.

(q) Hefford v. Alger, supra.

M. & W. 477.

(r) Morgan v. Griffith (1741), 7 Mod. 380; Perreau v. Bevan (1826), 5 B. & C. 284; Tunnicliffe v. Wilmot (1848), 2 C. & K. 626.

(s) Jackson v. Hanson (1841), 8

plaintiff, it is enough that it has till then been carried regularly forward (t). The condition that the action shall be prosecuted without delay (u) may be broken by a delay which does not exceed the time allowed by the ordinary practice of the Court, if the defendant is thereby unduly prejudiced (x); but the plaintiff is not responsible for delay occasioned by the default of the officers of the Court (y). A plaintiff who does not use due diligence in prosecuting the action commits a breach of the condition even though the action is not determined (z). The bond may be enforced although the statutory preliminaries have not been strictly complied with (a).

Where a person proposes to give a bond by way of security he Sureties. must serve, by post or otherwise, on the opposite party, and upon the registrar at his office, notice of the proposed sureties according to the prescribed form, and the registrar forthwith gives notice to both parties of the date on which he proposes that the bond shall be executed. He states in the notice (b) to the obligee that any valid objection which he has to make to the sureties or either of them must be made on such date (c). The sureties must make an affidavit of their sufficiency according to the prescribed form, unless the opposite party dispenses with such affidavit (d). Thus the onus of objecting to the sureties is thrown upon the obligee, and in any case the registrar's duty is only to judge of their sufficiency (e) on the materials before him. It has been held that he cannot refuse to receive a bond on the ground that the party is by law incapable of executing a valid bond (f).

Security having been duly given, the registrar will issue his Warrant to warrant (g) to the bailiff directing him to replevy and deliver the

replevy

⁽t) Morris v. Matthews (1841), 2 **Q. B. 293.**

⁽u) See Axford v. Perrett (1828), 4 Bing. 586.

⁽x) Gent v. Cutts (1847), 11 Q. B. 288.

⁽y) Harrison v. Wardle (1833), 5 B. & Ad. 146.

⁽²⁾ Harrison v. Wardle, supra. to pleading compliance with the bond, see Brackenbury v. Pell (1810), 12 East, 585.

⁽a) Stansfeld v. Helluwell (1852), 7 Ex. 373.

⁽b) See form of notice, Form 286 in Appendix to County Court Rules, 1903.

⁽c) County Court Rules, 19.33, Ord. 29, r. 1.

⁽d) Ib., r. 2.

⁽e) Under the former practice the sheriff did not warrant the sufficiency of the sureties: Hindle v. Blades (1813), 5 Taunt. 225; it was enough that they were apparently responsible: Hindle v. Blades, supra; Scott v. Waithman (1822), 3 Stark. 168. See Jeffery v. Bastard (1836), 4 A. & E. 823; Plumer v. Brisco (1847), 11 Q. B. 46.

⁽f) Young v. Brompton Waterworks Co. (1861), 1 B. & S. 675.

⁽y) For form of warrant, see Form 289 in Appendix to County Court **Rules**, 1903.

goods and chattels to the replevisor, and the bailiff will execute such warrant accordingly, and make a return to that effect. After goods taken in distress for rent have been replevied, the person distraining has no lien on them at law or in equity, but is left to his remedy on the replevin bond (h).

Removal of action to High Court. County Courts Act, 1888, s. 137. An action of replevin brought in the county court can be removed into the High Court by writ of certiorari (i), if the defendant applies to the High Court or to a Judge thereof for such writ, and shall give security, to be approved of by a Master of the Supreme Court, for such amount, not exceeding 150l., as such Master shall think fit, conditioned to defend such action with effect (k), and, unless the replevisor shall discontinue or shall not prosecute the action, or shall become nonsuit therein, to prove before the High Court that the defendant had good grounds for believing, either that the title to some corporeal or incorporeal hereditament, the rent or value of which exceeded 20l. by the year, or to some toll, market, fair, or franchise, was in question, or that the rent in respect of which the distress shall have been taken, or the value of the goods seized, exceeded 20l.

Appeal from county court.

Any party to an action of replevin in the county court has the ordinary right to appeal to the High Court upon a point of law, or upon the admission or rejection of any evidence, provided that where the amount of rent or the value of the goods seized does not exceed 20l., there is no appeal unless the Judge of the county court shall think it reasonable that such appeal should be allowed, and shall grant leave to appeal (l). Where the right of appeal is disputed on the ground that the goods do not exceed 20l in value, there should be an appraisement with an affidavit of value (m).

New trial.

In replevin, where the verdict is for the plaintiff, the Court will not grant a new trial even on payment of costs without very clear grounds; for the landlord has other remedies for his rent, and a new trial would renew the liability of the sureties and make the plaintiff incur the risk of double costs (n). But a

(h) Bradyll v. Ball (1784), 1 Bro. C. C. 427.

defendant succeeds: Tummons v. Ogle (1856), 6 E. & B. 571.

(n) Parry v. Duncan (1831), 7 Bing. 243.

⁽i) Application should be made to a Judge at chambers. See the Yearly County Court Practice, note to s. 126 of Act of 1888.

⁽k) As under sect. 135, this condition is not fulfilled unless the

⁽¹⁾ County Courts Act, 1888, s. 120. (m) Smith v. Euright (1893), 63 L. J. Q. B. 220, per Wright, J.

new trial is not refused merely on the ground that the sum recovered is under 20l. (o).

Action for Illegal Distress.

For the case of distress where no rent is due to the distrainor (p), Remedy for a remedy by action is given by 2 Will. & M. sess. 1, c. 5.

distress where no rent is due. recover double value

The fifth section of that statute provides, in case a distress Owner may and sale shall be made "for rent pretended to be arrear and due, where in truth no rent is arrear or due to the person or persons of goods sold. distraining or to him or them in whose name or names or right such distress shall be taken as aforesaid, that then the owner of such goods or chattels distrained and sold as aforesaid, his executors or administrators, shall and may, by action of trespass, or upon the case, to be brought against the person or persons so distraining, any or either of them, his or their executors or administrators, recover double of the value (q) of the goods or chattels so distrained and sold, together with full costs, of suit "(r).

In other cases of illegal distress for rent the tenant may, by Remedy in action, recover from the person on whose behalf the distress is made the full value of the goods and chattels distrained, without deducting the arrears of rent (s), unless there are circumstances of mitigation which the jury ought to take into consideration (t). The fact that the tenant has had part satisfaction by the return of the goods may be used in mitigation of damages (t).

Where goods are privileged from distress, such as goods Distress on deposited with a pawnbroker in the way of trade (u), trover lies goods. for them (x), and the measure of damages is the value of the goods, and not merely of the plaintiff's interest therein (y). But

other cases of illegal distress.

privileged

- (o) Edgson v. Cardwell (1873), L. R. 8 C. P. 647.
- (p) See, e.g., Serjeant v. Nash, Field & Co., [1903] 2 K. B. 304, 312, where a receiver appointed by mortgagees was held liable in damages for a wrongful distress.

(q) Masters v. Farris (1845), 1 C. B. 715.

(r) The expression "full costs of suit" means no more than the ordinary costs as between party and party: see Avery v. Wood, [1891] 3 Ch. 115, on the same expression in 5 & 6 Vict. c. 45 (the Copyright Act, 1842), s. 26.

(s) Keen v. Priest (1859), 4 H. & N. 236; Attack v. Bramwell (1863), 3 B. & S. 520. See Edmondson v. Nuttall (1864), 17 C. B. N. S. 280.

(t) Per Willes, J., in Edmondson v. Nuttall (1864), 34 L. J. C. P. at p. 104; Harvey v. Pocock (1843), 11 M. & W. 740.

(u) Supra, p. 258.

(x) Ward v. Ventom (1797), Peake, Add. Cas. 126; Dulton v. Whittem (1842), 3 Q. B. 961. See Shipwick v. Blanchard (1795), 6 T. R. 298.

(y) Swire v. Leach (1865), 18 C. B. N. S. 479.

the owner can recover only the damage caused by taking the goods actually privileged (z).

If, after an action for illegal distress has been brought, the landlord returns the goods distrained, the plaintiff may give evidence to show their damaged condition (a).

Summary Statutory Remedies.

Unlawful distress on goods exempt under 51 & 52 Vict. c. 21.

By the fourth section of the Law of Distress Amendment Act, 1895 (b), it is provided that a court of summary jurisdiction, on complaint that goods or chattels, exempt under section four of the Law of Distress Amendment Act, 1888 (c), from distress for rent, have been taken under such distress, may, by summary order, direct that the goods and chattels so taken, if not sold, be restored; or, if they have been sold, that such sum as the Court may determine to be the value thereof shall be paid to the complainant by the person who levied the distress or directed it to be levied.

Distress in Metropolitan Police District. In cases of unlawful or irregular distress within the metropolitan police district (d), where the tenancy is by the week or month, or the rent does not exceed 15l. a year, a summary remedy on complaint to a police magistrate is given by 2 & 3 Vict. c. 71 (e), s. 39.

Distress on agricultural holdings.

With respect to holdings to which the Agricultural Holdings Acts, 1883 and 1900, apply (f), it is provided (g) that, where any dispute arises (i) in respect of any distress having been levied contrary to the provisions of the Act of 1883; or (ii) as to the ownership of any live stock distrained, or as to the price to be paid for feeding such stock; or (iii) as to any other matter or thing relating to a distress on such holding, the dispute may (h) be heard and determined by the county court (i) or by a court of summary jurisdiction (k); and any such county court or court of

(z) Harvey v. Pocock, supra.

(a) M'Grath v. Bourne (1876), Ir. B. 10 C. L. 160.

(b) 58 & 59 Vict. c. 24.

(c) See supra, p. 265.

(d) See 10 Geo. 4, c. 44, s. 4.

- (e) The Metrop. Police Courts Act, 1839.
 - (f) Infra, Chap. VII., Sect. 4. (g) Agric. Hold. Act, 1883, s. 46.
- (h) This statutory remedy is cumulative, it is conceived, to all other remedies open to the parties respec-
- tively. Orders of county courts and courts of summary jurisdiction made under this 46th section cannot be quashed for want of form, or removed by certiorari or otherwise into any superior Court: sect. 48 of the Agric. Hold. Act, 1883.

(i) The decision is subject to the ordinary procedure as to appeal: Hanner v. King (1887), 57 L. T. 367.

(k) An appeal lies to general or quarter sessions: sect. 46 of the Agric. Hold. Act, 1883.

summary jurisdiction may make an order for restoration of any live stock or things unlawfully distrained, or may declare the price agreed to be paid in the case where the price of the feeding is required to be ascertained, or may make any other order which justice requires.

(j) REMEDY FOR IRREGULAR DISTRESSES.

A distress made for rent justly due is irregular in the following Instances of cases:—Where the goods distrained are sold without a proper notice, or, where appraisement is required (l), without a regular appraisement (m); or before the expiration of five (or fifteen) days from the notice (n); also where, owing to the neglect or improper conduct of the person distraining, the goods distrained are not sold for the best price that can be got for the same (o).

In an action grounded upon any such irregularity the distrainor Remedy.

will not be treated as a trespasser ab initio, and the tenant can recover only the special damage he has suffered. Provision to this effect is made by the Distress for Rent Act, 1737, by the nineteenth section of which it is enacted that, where any distress shall be made for any kind of rent justly due, and any irregularity or unlawful act shall be afterwards done by the party distraining, or by his agents, the distress itself shall not be deemed to be unlawful, nor the party making it be therefore deemed a trespasser ab initio; but the party aggrieved by such unlawful act or irregularity may recover full satisfaction for the special damage he shall have sustained thereby, and no more, in any action of

trespass, or on the case (p): provided always, that where the

irregular

11 Geo. 2, c. 19, s. 19. Distress not to be rendered unlawful by irregularity.

Person aggrieved may recover special damage only.

(l) Supra, p. 300.

(m) Biggins v. Goode (1832), 2 Cr. & J. 364; Knight v. Egerton (1852), 7 Ex. 407. See Knotts v. Curtis (1832), 5 C. & P. 322.

(n) See supra, p. 301; Wallace v. King (1788), 1 H. Bl. 13; Lucas v. Turleton (1858), 3 H. & N. 116.

(o) Supra, p. 302. As to actions for excessive distresses, see supra, p. 287.

(p) I.e., it was formerly held trespass if the irregularity was in the nature of trespass; otherwise case: Meesing v. Kemble (1809), 2 Camp. 115; Winterbourne v. Morgan (1809), 11 East, 395. But the distinction is now immaterial. Inasmuch as, by

the statute, the distrainor was not a trespasser ab initio, and an action on the case was given, trover would not lie against him: Wallace v. King (1788), 1 H. Bl. 13; nor, where any rent was due, would an auctioneer who had received goods improperly distrained, and subsequently returned them, be liable to such an action: Whitworth ∇ . Smith (1832), 5 C. & P. 250. As to pleading to the action, see sect. 21; R. S. C. 1883, Ord. 19, r. 12; Williams v. Jones (1841), 11 A. & E. 643; $Vaughan \nabla . Davies (1794)$, 1 Esp. 257; Furneaux v. Fotherby (1815), 4 Camp. 136; Postman v. Harrell (1833), 6 C. & P. 225.

plaintiff shall recover in such action, he shall be paid his full costs of suit (q).

Sect. 20.
Tenant not to recover if tender of amends made before action.

It is, however, provided by the twentieth section of the same Act that no tenant shall recover in any action for any such unlawful act or irregularity as aforesaid, if tender of amends hath been made by the party distraining, or his agent, before such action brought.

If the plaintiff fails, the defendant recovers his full costs under sect. 21 of the Act (r).

Actual damage must be proved.

Without proof of actual damage, the plaintiff in an action for an irregular distress is not entitled even to a verdict for nominal damages (s), though such damage need not be specially alleged (t). The measure of damages in the action is the value of the goods (u) distrained, after deducting the amount of rent due (x). This measure has been applied in an action founded on a sale rendered irregular by the fact that an agent for the landlord in the distress has acted as one of the appraisers (y).

(ii) Remedy on Execution against Tenant.

Although the landlord cannot distrain on goods which have been taken in execution, he is not altogether deprived of remedy in such a case; for by a statute of Anne (the Landlord and Tenant Act, 1709,) it was enacted as follows:—

8 Anne, c. 14 (z).
Goods not to be removed under execution until one year's rent is paid to landlord.

"No goods or chattels whatsoever (a), lying or being in or upon any messuage, lands, or tenements, which are or shall be leased for life, term of years, at will, or otherwise, shall be liable to be taken by virtue of any execution on any pretence whatsoever, unless the party at whose suit the said execution is sued out, shall, before the removal of such goods from off the said premises by virtue of such execution or extent, pay to the landlord of the

- (q) Hence the plaintiff may, it is conceived, recover costs in the High Court although the action should have been brought in the county court. See Reeve v. Gibson, [1891] 1 Q. B. 652. As to the meaning of "full costs of suit," see supra, p. 313, note (r).
- (r) Instead of "double costs" (5 & 6 Vict. c. 97, s. 2), see *Hundcock* v. Foulkes (1842), 9 M. & W. 431.
- (s) Rodgers v. Parker (1856), 18 C. B. 112; Lucas v. Tarleton (1858), 3 H. & N. 116. But see supra, p. 287,

- notes (f), (g).
- (t) Knotts v. Curtis (1832), 5 C. & P. 322.
- (u) I.e., the fair value to the tenant: Knotts v. Curtis, supra.
- (x) Whitworth v. Maden (1847), 2 C. & K. 517; Biggins v. Goode (1832), 2 Cr. & J. 364; Knight v. Eyerton (1852), 7 Ex. 407.
- (y) Rocke v. Hills (1887), 3 T. L. R. 298.
- (z) C. 18 in Revised Statutes.
- (a) Forster v. Cookson (1841), 1 Q. B. 419.

said premises, or his bailiff, all such sums of money as are or shall be due for rent (b) for the said premises at the time of the taking such goods or chattels by virtue of such execution: provided the said arrears of rent do not amount to more than one year's (c) rent; and in case the said arrears shall exceed one year's rent, then the said party at whose suit such execution is sued out, paying the said landlord or his bailiff one year's rent, may proceed to execute his judgment, as he might have done before the making of this Act; and the sheriff or other officer is hereby empowered and required to levy and pay to the plaintiff as well the money so paid for rent as the execution money "(d).

This statute did not give the landlord a right to distrain, but it prohibited the removal of the goods seized by the sheriff until the landlord's rent in arrear (not exceeding one year's rent) had been paid by the execution creditor. It in effect impounded the goods for the landlord's benefit: they could not be removed until he was paid (e).

It is to be noted that the statute of Anne applies only in favour of the immediate landlord (f), and it is immaterial that such landlord is himself a lessee (g). Hence, in the case of a building lease, it is the building owner, and not the ground landlord, who can use the statute against the execution creditor of the occupying tenant. The execution (which by analogy includes a sequestration (h)) must be levied at the instance of a third person, not of the landlord himself; and hence the landlord cannot by virtue of the statute retain his rent out of proceeds of an execution which he has to refund to the tenant's trustee in bankruptcy (i). Where two executions are levied, the landlord cannot have a year's rent on each (k). The statute applies only where there is an existing tenancy (l) (including a tenancy created upon attornment

(b) See Yates v. Ratledge (1860), 5 H. & N. 249.

(c) The landlord is entitled to a full year's rent, although he has been used to remit some portion of it to the tenant: Williams v. Lewsey (1831), 8 Bing. 28.

(d) This enactment does not apply to goods taken in execution under the warrant of a county court. See

infra, p. 321.

(e) Re Mackenzie, [1899] 2 Q. B. at p. 574. The judgment of the C. A. in this case contains a valuable account of the practice under the

statute of Anne.

(f) Bennett's Case (1727), 2 Str. 787.

(g) Thurgood v. Richardson (1831), 7 Bing. 428.

(h) Dixon v. Smith (1818), 1 Swanst. 457.

(i) Taylor v. Lanyon (1830), 6 Bing. 536.

(k) Dod v. Saxby (1736), 2 Str. 1024.

(l) Hodgson v. Gascoigne (1821), 5 B. & A. 88; Riseley v. Ryle (1842), 10 M. & W. 101; Cox v. Leigh (1874), L. R. 9 Q. B. 333. by way of security (m)), at a certain rent (n). Occupation money agreed to be paid by a purchaser at a rate of so much a year till the purchase is completed is, for this purpose, money due as rent (o). But the rent must be actually due at the time of levy (p). Rent accruing due after the taking, and during the sheriff's continuance in possession, cannot be claimed under the statute (q). If, however, the sheriff returns that he has paid so much "for rent due for the premises," it will be assumed that the payment was for rent due at the time of seizure (r).

Duty of sheriff.

The sheriff is not bound to find out if any rent is due to the landlord; the latter ought to inform him (s). But express notice to the sheriff is not necessary, and the duty imposed on him by the statute attaches if he knows that rent is due (t). When, however, a claim is made by the landlord, the law casts on the sheriff the responsibility of ascertaining that the relationship of landlord and tenant really exists, and he is entitled to see the lease (u). If this relationship appears, the burden of proving that no rent is due seems to be thrown on the sheriff (x). The sheriff cannot interplead if the claim of the landlord is disputable (y).

When notice has been given by the landlord to the sheriff that rent is due, it becomes the duty of the sheriff under the statute not to sell anything upon the demised premises till the rent has

(m) Yates v. Ratledge (1860), 5 H. & N. 249.

(n) Riseley v. Ryle (1843), 11 M. & W. 16.

(o) Saunders v. Musgrave (1827), 6 B. & C. 524.

(p) Gwilliam v. Barker (1815), 1 Price, 274.

(q) Hoskins v. Knight (1813), 1 M. & S. 245; Reynolds v. Barford (1844), 7 M. & Gr. 449; Re Benn Davis (1886), 55 L. J. Q. B. 217.

(r) Reynolds v. Barford, supra.

(s) Smith v. Russell (1811), 3 Taunt. 400; Gawler v. Chaplin (1848), 2 Ex. 503. Notice may be given by the landlord in the following form:—

To the sheriff of the county of ——, and to his officer.

Take notice, that there is owing to me from my tenant, C. D., of ——, the sum of £——, for [one year's] rent, due on the —— day of ——

last, in respect of the house [or farm] at ——, in the county of ——, in his occupation; and I require you not to remove the goods seized by you in execution in the said house [or upon the said farm] until the said arrears of rent have been paid.

Dated this — day of —, 19—.

(t) See per Parke, B., in Riseley v. Ryle (1843), 11 M. & W. at p. 20; Andrews v. Dixon (1820), 3 B. & A. 645.

(u) Augustien v. Challis (1847), 1 Ex. 279, 280; Keightley v. Birch (1814), 3 Camp. 521.

(x) See Harrison v. Barry (1819),

7 Price, 690.

(y) Bateman v. Farnsworth (1860), 29 L. J. Ex. 365, decided on 1 & 2 Will. 4, c. 58, s. 6. Cf. the similar words of R. S. C. 1883, Ord. 57, r. 1 (b).

been paid (z), and the rent must be paid without any deduction for poundage (a). If the goods are less in value than the rent lawfully claimed, the sheriff should withdraw (b). If they exceed this value, he may levy both for the rent and the execution (c), and at his own risk remove the goods, and after sale pay the landlord his year's rent. If he does so, and exhausts the proceeds of sale in payment of rent and expenses, he can make a return of nulla bona to the writ (d). A proper course is for the sheriff to apply to the execution creditor for the money with which to satisfy the claim of the landlord. If the execution creditor provides it, the sheriff pays the landlord and proceeds with the If the execution creditor does not provide it, the sheriff cannot be called on to infringe the statute, and may return nulla bona, and withdraw from possession (e). Until the rent is paid, there are no goods out of which the sheriff is bound to levy, that is to say, which he is bound to sell (f). It has, however, become a common practice for the sheriff to sell and to pay the landlord out of the proceeds (g).

The sheriff infringes the statute, and renders himself liable to Liability of an action (h) by the landlord, if, knowing that rent is in arrear, he removes any of the goods without retaining that rent (i). The execution creditor has nothing to do with the removal, and is not liable (k). To ground the action there must be an actual or constructive removal of the goods (l), but the landlord is not restricted to the action. Even after removal and sale of the goods, he has a direct claim against the proceeds of sale so long as they are in the hands of the sheriff (m), and application may

```
(z) Thomas v. Mirehouse (1887),
19 Q. B. D. 563, 566; Riseley v.
Ryle (1843), 11 M. & W. p. 21.
```

(a) Gore v. Gofton (1726) 1 Str. 643.

(f) Per Lord Denman, C.J., in Cocker v. Musgrove (1846), 9 Q. B. at p. 235. See White v. Binstead (1853), 13 C. B. at p. 307; Calvert v. Jolliffe (1831), 2 B. & Ad. 418.

(y) Re Mackenzie, [1899] 2 Q. B. at p. 577.

(h) See Green v. Austin (1812), 3 Camp. 260.

(i) Colyer v. Speer (1820), 2 Br. & B. p. 69; Riseley v. Ryle (1843), 11 M. & W. 16; Henchett v. Kimpson (1762), 2 Wils. 140.

(k) Cocker v. Musgrove (1846), 9

Q. B. p. 230.

(l) Smallman v. Pollard (1844), 6 M. & Gr. 1001.

(m) Arnitt v. (farnett (1820), 3 B. & A. 440; Yates v. Ratledge (1860), 5 H. & N. 249, 252; Re Mackenzie, [1899] 2 Q. B. 566; 68 L. J. Q. B. 1003.

⁽b) See Foster v. Hilton (1831), 1 Dowl. 35.

⁽c) See Colyer v. Speer (1820), 2 Br. & B. 67, 70.

⁽d) Wintle v. Freeman (1841), 11 A. & E. 539.

⁽e) Per Lord Esher, Mar., in Thomas v. Mirehouse (1887), 19 Q. B. D. p. 566. See Davidson v. Allen (1886), 20 L. R. Ir. 16; Re M'Carthy (1881), 7 L. R. Ir. 473.

be made in chambers for payment of arrears of rent out of the proceeds (n). And so, too, if the goods are sold before removal, and the landlord has not given notice of his claim till after the sale (n). The action may be brought by the administrator of the landlord (o); provided, at least, administration has been granted and demand of the rent made before the goods have been removed (p).

Measure of damages against sheriff.

In an action against the sheriff for removing goods taken in execution without paying the landlord's claim, the measure of damages is primâ facie the amount of rent due; but the sheriff may prove in mitigation of damages that the value of the goods removed was less than the amount of rent due (q), though for this purpose the amount produced at a forced sale of the goods by the sheriff is not the test of their value (q). If the goods are returned by the sheriff the landlord has no action, for, while the goods are in custodia legis, he cannot distrain, and suffers, therefore, no damage (r). If the sheriff sells before payment of the rent, the action will not be stopped on paying the proceeds of sale into Court, for these are not the measure of damages (s). If the landlord accepts the sheriff's undertaking to pay the year's rent, and allows the goods to be removed, he loses his action on the statute, and, should the undertaking be unenforceable under the Statute of Frauds—as for not stating the consideration—he is without remedy (t).

Execution after withdrawal by landlord.

Statute limited to goods which sheriff can seize. If the landlord is induced to withdraw a distress on the tenant's false assurance that a particular debt is satisfied, and then there is judgment and execution on the debt, the landlord is entitled to his year's rent under the statute (u).

The operation of the statute is restricted to such goods as the sheriff can seize; hence in an execution against the tenant it only refers to the tenant's goods (x). Consequently, if the sheriff

(n) Yates v. Ratledge, supra.

(o) Palgrave v. Windham (1720), 1 Str. 212.

(p) Waring v. Dewberry (1718), 1 Str. 97.

(q) Thomas v. Mirehouse (1887), 19 Q. B. D. 563.

(r) Lane v. Crockett (1819), 7 Price, 566. Distinguish Wren v. Stokes, [1902] 1 Ir. R. 167, where the landlord was held entitled to damages. (s) Foster v. Hilton (1831), 1 Dowl. 35; Calvert v. Jolliffe (1831), 2 B. & Ad. 418. See Groombridge v. Fletcher (1834), 2 Dowl. 353.

(t) Rotherey v. Wood (1811), 3 Camp. 24.

(u) Wollaston v. Stafford (1854), 15 C. B. 278.

(x) Beard v. Knight (1858), 8 E. & B. 865. See Reed v. Thoyls (1840), 6 M. & W. 410. seizes under an execution goods of a stranger and receives notice of a claim for rent by the landlord, he cannot apply the produce of sale of the stranger's goods in payment of the rent (y). But But not the bankruptcy of the tenant, although his goods thereupon pass to his trustee, does not prevent the sheriff from satisfying the landlord's claim. By the execution the goods are placed in custodia legis, so that the landlord cannot distrain, while the bankruptcy alone would not take away his right of distress. Hence the sheriff is justified in paying the landlord's claim out of the proceeds of sale notwithstanding that he has had notice of the bankruptcy (z), unless, indeed, the execution itself is overridden and rendered void by the bankruptcy, and the landlord has not distrained (a). Where there is a dispute as to the ownership of goods taken in execution, and the goods are sold under an order in interpleader proceedings, the sheriff is not justified in paying the rent out of the proceeds (b).

excluded by bankruptcy of tenant.

In the case of weekly and other tenancies for less than a year, Weekly the arrears of rent which may be claimed upon an execution are specially restricted by the Execution Act, 1844. By the sixtyseventh section of that Act it is enacted that "no landlord of 7 & 8 Vict. any tenement let at a weekly rent shall have any claim or lien upon any goods taken in execution under the process of any court of law for more than four weeks' arrears of rent; and if such tenement shall be let for any other term less than a year, the landlord shall not have any claim or lien on such goods for more than the arrears of rent accruing during four such terms or times of payment."

tenancies.

c. 97, s. 67. Landlord of weekly tenant to claim four weeks' arrears

For the case of goods taken in execution under county court Execution in process provision is made by sect. 160 of the County Courts That section provides that sect. 1 of the Act of 51 & 52 Vict. Act, 1888. 8 Anne, c. 14, shall not apply to goods taken in execution under the warrant of a county court; but the landlord of any tenement in which any such goods shall be so taken may claim the rent thereof at any time within five clear days from the date of such county court, taking, or before the removal of the goods, by delivering to the bailiff or officer making the levy any writing signed by himself arrears of

the county court. c. 43, s. 160. Where goods are seized under warrant of landlord may claim certain

rent.

⁽y) See note (x) on p. 320. (z) Re Mackenzie, [1899] 2 Q. B. 566; 68 L. J. Q. B. 1003; Re Driver (1899), 43 Sol. Journ. 705.

⁽a) See remarks of C. A. in Re Mackenzie, supra (at pp. 576-578),

on Gethin v. Wilks (1833), 2 Dowl. 189, and on Lee v. Lopes (1812), 15 East, 230.

⁽b) White v. Binstead (1853), 13 C. B. 304.

or his agent which shall state the amount of rent claimed to be

in arrear, and the time for and in respect of which such rent is due; and if such claim be made, the bailiff (c) or officer making the levy shall, in addition thereto, distrain for the rent so claimed and the costs of such distress, and shall not within five days next after such distress sell any part of the goods taken, unless they be of a perishable nature, or upon the request in writing of the party whose goods shall have been taken; and the bailiff shall afterwards sell such of the goods under the execution and distress as shall satisfy, first, the costs of, and incident to, the sale; next the claim of such landlord, not exceeding the rent of four weeks where the tenement is let by the week; the rent of two terms of payment where the tenement is let for any other term less than a year; and the rent of one year in any other case; and, lastly, the amount for which the warrant issued; and if any replevin be made of the goods so taken, the bailiff shall, notwithstanding, sell such portion thereof as will satisfy the costs of, and incident to, the sale under the execution and the amount for which the warrant issued; and in either event the overplus of the sale, if any, and the residue of the goods shall be returned to the defendant, and the poundage of the high bailiff and broker for keeping possession, appraisement, and sale under such distress (d) shall be the same as would have been payable if the distress had been an execution of the Court, and no other fees shall be demanded or taken in respect thereof.

not to exceed, in weekly tenancy, rent of four weeks; in tenancy for less than a year, rent of two terms of payment; and in any other case, one year's rent.

Such arrears

Under this 160th section only the goods of the execution debtor can be seized to pay the rent due to the landlord (e); but it is not necessary that they should be the goods of the tenant. Goods of an execution debtor must satisfy the landlord's claim for rent in respect of the premises where they happen to be (f). Where different lands are held by a tenant at separate rents under the same landlord, the rent of each tenement for the

is entitled to a separate set of fees in respect of each seizure: Re Broster, Ex parte Pruddah, [1897] 2 Q. B. 429. See sect. 154.

(e) Beard v. Knight (1858), 8 E. & B. 865; Foulger v. Taylor (1860), 5 H. & N. 202.

(f) Hughes v. Smallwood (1890). 25 Q. B. D. 306.

⁽c) The bailiff in levying is under the common law liability for negligence, notwithstanding the summary procedure of sect. 49 of the County Courts Act, 1888: Watson v. White (1896), 12 T. L. R. 387.

⁽d) Where the high bailiff seizes goods under an execution, and then seizes further goods on the same premises under a claim for rent, he

prescribed period must be paid out of the goods on it at the time of the levy (g).

Where goods have been taken in execution under any process Execution of the Admiralty Division of the High Court, and a claim is made by any landlord for rent, the Judge of the Admiralty process. Court has jurisdiction to adjudicate upon the claim, and all other proceedings must be stayed (h).

under Admiralty

(iii) Remedy on Bankruptcy of Tenant.

Apart from the limitation imposed by statute (i), the bank- subject to ruptcy of a tenant does not interfere with the landlord's right of distress (j), and for his protection he should on the bankruptcy landlord can distrain for rent then due (k). He may do this at any time while the tenant's goods remain on the premises, notwithstanding that the trustee has taken possession—for such possession does not place the goods in custodia legis (l)—and even after the goods have been sold by the trustee (m). But to gain a lien upon the goods the landlord must actually distrain (n). If the landlord permits the goods to be removed from the premises without distraining, he can only be considered as a common creditor, and must come in pro ratâ (o). Similarly he will lose his preference if he abandons the distress (p), or if he allows the goods to remain in the order and disposition of the bankrupt (q). If, however, the landlord forbears to distrain, upon the undertaking of the trustee to treat the rent as a first charge (subject to preferential payments under the Preferential Payments in Bankruptcy Act, 1888) on the proceeds of sale, the order of payment will be (1) preferential creditors; (2) landlord; (3) costs of administration, &c. (r).

Bankruptcy Act, 1883, distrain notwithstanding bankruptcy.

- (g) Gage v. Collins (1867), L. R. 2 C. P. 381.
- (h) Admiralty Court Act, 1861 (24 & 25 Vict. c. 10), s. 16.

(i) Infra, p. 324.

- (j) Crosse v. Welch (1892), 8 T. L. R. 709. See judgment of Denman, J., p. 401; Ex parte Till (1873), 16 Eq. 97; and Re Mackenzie, [1899] 2 Q. B. at p. 577.
- (k) Gethin v. Wilks (1833), 2 Dowl. 189.
- (1) Ex parte Grove (1747), 1 Atk. 101; Brigge v. Sowry (1841), 8 M. &

- W. 729; Re Collins (1888), 21 L.B. Ir. **508.**
- (m) Ex parte Plummer (1739), 1 Atk. 103.
- (n) Re Suffield and Watts (1888), 20 Q. B. D. 693.
- (o) Ex parte Descharmes (1742), 1 Atk. 103.
- (p) Bagge v. Mawby (1853), 8 Ex. 641.
- (q) Ex parte Shuttleworth (1832), 1 D. & C. 223.
- (r) Re Chapman (1894), 10 T. L. R. 449.

Effect of payment where landlord is entitled to distrain.

A landlord who has a right to distrain for arrears of rent and who receives payment, is entitled to retain the money against the trustee in bankruptcy (s), even though at the time of payment there are no goods on the premises upon which a distress can be levied (t). And if the landlord buys goods from the trustee in bankruptcy upon the premises, it seems that he can retain out of the price of the goods the amount of rent for which he could have distrained (u), such an amount being limited to the six months' arrears allowed by the Bankruptcy Act (x). A stranger who pays off a distress for rent is entitled to be repaid out of the bankrupt tenant's estate in priority to the creditors (y): and a stranger who pays rent to prevent a distress, and recoups himself by selling goods of the bankrupt, is entitled to retain the amount against the trustee in bankruptcy (z).

Statutory limitation of distress against bankrupt

tenant. **Distress** levied after commencement of bankruptcy to be available for six month's rent only.

By sect. 42 (1) of the Bankruptcy Act, 1883, it is provided as follows:-

"The landlord, or other person to whom any rent is due from the bankrupt (a) may at any time, either before or after the commencement of the bankruptcy, distrain upon the goods or effects of the bankrupt for the rent due to him from the bankrupt, with this limitation, that if such distress for rent be levied after the commencement of the bankruptcy (b), it shall be available only for six months' rent (c) accrued due prior to the date of the order of adjudication; but the landlord or other person to whom the rent may be due from the bankrupt may prove under the bankruptcy for the surplus due for which the distress may not have been available."

- (s) Stevenson v. Wood (1805), 5 Esp.
- (t) Mavor v. Croome (1823), 1 Bing. 261.
- (u) Buckley ∇ . Taylor (1788), 2 T. R. 600.
- (x) Re Griffith (1897), 66 L. J.Q.B. 763.
- (y) Ex parte Kennard (1870), 21 L. T. 684.
- (z) Ex parte Elliott (1838), 3 M. & A. 664.
- (a) See Ex parte Harrison (1884), 13 Q. B. D. 753.
- (b) The bankruptcy of a debtor is to be deemed to commence at the time of the act of bankruptcy being committed on which a receiving order is made against him, or, if the bank-

rupt is proved to have committed more acts of bankruptcy than one, to commence at the time of the first of the acts of bankruptcy proved to have been committed by the bankrupt within three months next preceding the date of the presentation of the bankruptcy petition: sect. 43 of the Act of 1883. See Expure Bayly (1852), 22 L. J. Bank. 26; Paull v. Best (1863), 3 B. & S. 537; Re Crook (1892), 66 L. T. 29.

(c) The words "six months' rent" were substituted, by sect. 28 of the Bankruptcy Act, 1890, for the words "one year's rent," which stood here in sect. 42 (1), as originally enacted. See Ex parte Dyke (1882), 22 Ch. U.

p. 425.

The section applies to an order under the Act for the administration of the estate of a debtor whose debts do not exceed 50l., or of a deceased person who dies insolvent (d); but not to an order for administration made in the Chancery Division (e).

It does not protect a distress levied for a mere sham rent created to give a mortgagee an additional security in bankruptcy (f); but a distress under an ordinary attornment clause is good against the trustee in bankruptcy (g).

The effect of the statute, taken with the previous law, is, that Effect of the if the distress is levied before the commencement of the bank- limitation. ruptcy, the landlord is subject only to the limitation of six years under the Real Property Limitation Act, 1833 (h). If the distress is levied after the commencement of the bankruptcy, the landlord can recover under it only six months' arrears accrued prior to the order of adjudication (i); and if the order is made in the interval between two rent-days, the rent up to the date of the order will be apportioned, and the landlord can distrain for it when the rent for the quarter or other period becomes due (k). For rent accruing due after the order of adjudication the landlord is entitled to distrain (l), even though it is a rent payable in advance, and for this purpose the leave of the Court is not required (m). The landlord is entitled also to prove his debt, but he cannot both distrain and prove (n), save where the proof is in respect of arrears exceeding the six months' limit.

The statutory limitation of the right of distress is imposed only Cases where for the benefit of the bankrupt's estate, and it does not apply does not to goods upon the demised premises which have been mortgaged beyond their value, and in which consequently the bankrupt has no interest (o). Nor does it apply to a distraint made by a superior landlord, or to a distraint upon the bankrupt's goods

⁽d) Sub-sect. (2). See sects. 122, 125.

⁽e) Re Fryman's Estate (1888), 38 Ch. D. 468.

⁽f) Ex parte Williams (1877), 7 C. D. 138; Ex parte Jackson (1880), 14 C. D. 725.

⁽g) Ex parte Voisey (1882), 21 Ch. D. 442.

⁽h) 3 & 4 Will. 4, c. 27, s. 42. See Ex purte Bayly (1852), 22 L. J. Bank. **26.**

⁽i) As to the recovery of any excess received by the landlord or his agent,

see Re Crook (1892), 66 L.T. 29. As to the effect of an agreement varying the mode of payment, see Re Smith and Hartogs (1895), 44 W. R. 79.

⁽k) Re Howell, [1895] 1 Q. B. 844. (1) Briggs v. Sowry (1841), 8 M. & W. 729.

⁽m) Ex parte Hale (1875), 1 Ch. D. 285.

⁽n) Ex parte Grove (1747), 1 Atk. 104.

⁽a) Brocklehurst v. Lawe (1857), 7 E. & B. 176. See Railton v. Wood (1890), 15 A. C. 363.

when upon the premises of a third person, the distraint being for rent due for such premises (p).

Discharge of bankrupt.

The discharge of the bankrupt operates only to relieve him of personal liability, and does not affect the landlord's right to recover his rent by distress (q).

Preferential debts in bankruptcy.

Where the landlord distrains on any goods of a bankrupt within three months next before the date of the receiving order, preferential debts under the Preferential Payments in Bankruptcy Act, 1888 (r), are a first charge on the goods distrained or the proceeds of sale thereof; provided that in respect of any money paid under any such charge the landlord shall have the same rights of priority as the person to whom such payment is made (s).

(iv) Remedy on Winding up.

In general, distress after winding up is void.
25 & 26 Vict.

c. 89, s. 163.

Sect. 163 of the Companies Act, 1862, provides as follows:—
"Where any company is being wound up by the Court, or subject to the supervision of the Court, any attachment, sequestration, distress, or execution, put in force against the estate or effects of the company after the commencement of the winding up (t), shall be void to all intents."

Sect. 10 of the Judicature Act, 1875, which for certain purposes assimilates the rules in the winding up of companies to the rules in bankruptcy, does not operate to give the landlord of a company a right to distrain for rent due before the winding up order (u).

But in some cases distress allowed.

Notwithstanding the generality of sect. 163 of the Companies Act, 1862, it has been held that a distress is a proceeding which may be commenced or proceeded with by leave of the Court under sect. 87 of the same Act(x), which section is as follows:—

Sect. 87.

"When an order has been made for winding up a company

(p) See 1 Smith's L. C. 11th ed. 449; Ex parte Harrison (1884), 13 Q. B. D. p. 765.

(q) Newton v. Scott (1842), 10 M. & W. 471; Briggs v. Sowry (1841), 8 M. & W. 729; Phillips v. Shervill (1845), 6 Q. B. 944.

(r) 51 & 52 Vict. c. 62.

(s) Sect. 1 (4).

(t) A compulsory winding up commences at the time of the presentation of the petition for winding up; a winding up under supervision at the time of the passing of the resolution

for winding up: Companies Act, 1862, ss. 84, 147.

(u) Re Coal Consumers' Association (1876), 4 Ch. D. 625; Re Bridgewater Engineering Co. (1879), 12 Ch. D. 181; Thomas v. Patent Lionite Co. (1881), 17 Ch. D. p. 257; Re South Kensington Co-op. Stores, ib. 161.

(x) Re Exhall Coul Mining Co. (1864), 4 D. J. & S. 377; Re Lancashire Cotton Co. (1887), 35 Ch. D. 656; Re Higginshaw Mills Co., [1896] 2 Ch. 544.

under this Act, no suit, action, or other proceeding shall be proceeded with or commenced against the company except with the leave of the Court, and subject to such terms as the Court may impose."

As a general rule, leave will not be given to distrain for rent When leave accrued due before the commencement of the winding up, if the lessor can prove for the rent against the assets of the company (y), given. nor for rent accruing due while the liquidator remains in possession of the demised premises after the winding up, if this is by arrangement with the landlord and for the joint benefit of the landlord and the company(z); and leave will be refused if the liquidator simply abstains from trying to get rid of the property (a).

to distrain will not be

Primû facie, sect. 163 of the Act of 1862, prohibits the Principle on landlord's distress, and to get over it the landlord must show is given. either that it is inequitable for the company or its liquidator to insist on the section—that is, that there is some special equity which entitles the landlord to ask the Court to relieve him of the burden of the section—or that it is a case in which the Court will allow distress to be put in so as to recover rent which ought to be paid as one of the expenses of winding up (b).

which leave

Thus leave to distrain for rent accruing due after the winding up is given if the liquidator remains in possession for the convenience of the winding up(c). But the fact that an indirect advantage accrues from the possession of the liquidator is not

(y) Re Coal Consumers' Association (1876), 4 Ch. D. 625; Re Bridgewater Eugineering Co. (1879), 12 Ch. D. 181. Where the lease is held by a trustee for the company, the lessor has no right of proof against the company, and he can take the goods of the company in the same manner as the goods of a stranger; and so where the company has taken possession under an agreement for the assignment of the lease: Re Lundy Granite 'Co.(1871), L.R.6 Ch. 462; Re Traders' N. Staff. Co. (1874), 19 Eq. 60; Re Regent United Service Stores (1878), 8 Ch. D. 616. It makes no difference that the liquidator offers to allow the lessor to prove: Re Regent United Service Stores, supra. In Ex parte Clemence (1883), 23 Ch. D. 154, it was held that a landlord, although he had a collateral security in the shape of a promissory note given by the company, ought not to be deprived of his remedy by distress. But that decision has been disapproved of. See per Wright, J., in Re Harpur's Cycle Fittings Co., [1900] 2 Ch. 731, at p. 734.

(z) Re Progress Assurance Co. (1870), L. R. 9 Eq. 370.

(a) Re Oak Pits Colliery Co. (1882), 21 Ch. D. p. 331.

(b) Per Cotton, L.J., in Re Lancashire Cotton Co. (1887), 35 Ch. D. p. 662.

(c) Re Oak Pits Colliery Co. (1882), 21 Ch. D. p. 330; Re Lundy Granite Co. (1871), L. R. 6 Ch. p. 466; Re N. Yorkshire Iron Co. (1878), 7 Ch. D. 661; Re Silkstone Coal and Iron Co. (1881), 17 Ch. D. 158; Re Higginshaw Mills Co., [1896] 2 Ch. p. 550.

enough (d). If the goods to be distrained upon are mortgaged to debenture-holders to an amount exceeding their value, the landlord is entitled to distrain, upon the ground that the goods are not the goods of the company for the purpose of sect. 163 (e), and it makes no difference that the debenture-holders are willing to release their security (e).

Apportionment of rent due before and after winding-up. Where the landlord is entitled to prove for the rent due before winding up, and to be paid in full the rent accruing after winding up, the rent will be apportioned as at the date of the winding up petition or resolution, and he will be paid in full the part in respect of the period subsequent to that date(f); but where the rent is payable in advance, the landlord will be paid in full only so much as is due while the liquidator continues in beneficial occupation (g).

Distress by mortgagee. A mortgagee who is entitled to distrain under an attornment clause contained in a mortgage granted by the company does not, for the purpose of obtaining leave to distrain, stand in as good a position as a lessor (h); and though there may be circumstances which would make it just that mortgagees should have power to distrain for interest accrued since the winding up, leave will not be given where the occupation by the liquidator has been for the joint benefit of the company and the mortgagee (i).

Right of re-entry.

If the landlord has a right of re-entry, and seeks to exercise it, the liquidator can only retain the property on condition of complying with the legal obligation to pay rent (k), and in this way the landlord may be able to obtain payment in full.

Distress levied before winding-up.

Where the distress has been already levied before the winding up, the rule is in favour of the landlord, and the proceedings under the distress will be allowed to go on unless there are special circumstances rendering this course inequitable (l).

Preferential debts.

Where a landlord has distrained on any goods of a company being wound up within three months next before the date of the

(d) Re House and Land Investment Trust (1894), 42 W. R. 572.

(f) Re South Kensington Co-op. Stores (1881), 17 Ch. D. 161.

(g) Shackell v. Chorlton, [1895] 1 Ch. 378.

(h) Re Lancashire Cotton Co. (1887),

35 Ch. D. 656, see p. 663. Cf. Re Brown, Bayley and Dixon (1881), 18 Ch. D. 649.

(i) Re Higginshaw Mills Co., [1896] 2 Ch. 544.

(k) Re Silkstone and Dodworth Co. (1881), 17 Ch. D. 158; General Share Co. v. Wetley Brick Co. (1882), 20 Ch. D. 260.

(l) Re Roundwood Colliery Ca., [1897] 1 Ch. 373, per Stirling, J.

⁽e) Re New City Constitutional Club Co., Ex parte Purssell (1887), 34 Ch. D. 646. See, too, Re Harpur's Cycle Fittings Co., [1900] 2 Ch. 731.

winding-up order, preferential debts under the Preferential Payments in Bankruptcy Act, 1888 (m), are a first charge on the goods so distrained on, or the proceeds of sale thereof; but in respect of any money paid under any such charge the landlord has the same rights of priority as the person to whom such payment is made(n).

Formerly, in the winding up of a lessee company the lessor was Proof for allowed to prove for the whole value of the future rent, though with the qualification that he was not to receive more than the amount which the company might actually become liable to pay under the covenant in the lease (o); and in a case where the lessor did not wish the lease to be given up, the same rule was recently followed (p), notwithstanding the principle as to proving future liabilities established by Hardy v. Fothergill(q). Where, however, the lessor is willing for the lease to be treated as determined, and desires to prove once for all for his loss on that footing, proof may be at once made in respect of all liabilities, present or future, certain or contingent; and even in a case where he is not so willing, it must not be taken for certain that, since Hardy v. Fothergill, he is entitled to the benefit of the old rule (r).

future rent.

(v) Remedy by Action.

The remedy by distress does not exclude the right of the land. Remedy by lord to recover rent by action based on the contract between excluded by himself and the tenant. Where, however, he distrains for rent distress. and does not sell the goods, he cannot bring an action for the rent so long as he holds the distress, even though it be insufficient to satisfy the rent(s). But after the sale he can bring an action to recover the deficiency (t).

action not

The granting of a new lease does not release rent due before Or by new its execution, although the deed is dated before the rent is due and the term is stated to have commenced before that date (u).

lease.

(m) 51 & 52 Vict. c. 62.

(n) Sect. 1 (4).

(p) Re New Oriental Bank Corp.

Lim., [1895] 1 Ch. 753.

(q) (1888), 13 App. Cas. 351.

(r) Re Panther Lead Co., [1896] 1 Ch. 978.

(8) Lehain v. Philpott (1875), L. R. 10 Ex. 242.

(t) Philpott v. Lehain (1876), 35 L. T. 855.

(u) Cooper v. Robinson (1842), 10 M. & W. 694.

⁽⁰⁾ Re Haytor Granite Co. (1865), L. R. 1 Ch. 77; Re Horsey's Claim (1868), L. R. 5 Eq. 561; Oppenheimer v. British, &c., Investment Bank (1877), 6 Ch. D. 744. Where a mortgagee of the lessor is in possession, see Re Westbourne Grove Drapery Co. (1877), 5 Ch. D. 248.

Actions for rent where lease is by deed.
Action for rent where lease is not by deed.

Use and occupation.

11 Geo. 2, c. 19, s. 14. Where agreement is not by deed, landlord may recover reasonable satisfaction.

Entry necessary.

Damages.

If the lease is by deed, the action may be either for rent on the indenture or on a covenant for payment of rent (x).

Where the lease is not by deed, the action may be either for rent on the special contract or for use and occupation (y). In an action for rent on a lease at will occupation must be shown; but not where the lease is for years (z).

The action for use and occupation (a) is given by the fourteenth section of the Distress for Rent Act, 1737, which provides that it shall be lawful for the landlord, where the agreement is not by deed, to recover a reasonable satisfaction for the lands, tenements, or hereditaments held or occupied by the defendant, in an action on the case, for the use and occupation of what was so held or enjoyed; and that if, in evidence on the trial of such action, any parol demise or any agreement (not being by deed) whereon a certain rent was reserved shall appear, the plaintiff shall not therefore be nonsuited, but may make use thereof as an evidence of the quantum of the damages to be recovered.

An action for use and occupation lies upon a contract, express or implied, to pay for the occupation (b), but only where the tenant has actually entered and occupied the premises (c), though he need not occupy for the whole term covered by the contract (d). Sending in people to clean and decorate the house is evidence of occupation (e).

Under this form of action the measure of damages recoverable is usually the rent, where a rent has been agreed upon (f); and where no rent has been agreed upon, such sum as the jury may

(x) For the evidence in these actions, see Roscoe's Nisi Prius Evidence, 17th ed. 720.

(y) For the evidence in these actions, see the treatise referred to supra, note (x).

(z) Bellasi's v. Burbrick (1697), 1 Salk. 209.

(a) In use and occupation the plaintiff cannot recover rent payable in advance: Angell v. Randall (1867), 16 L. T. 498. An equitable estate in the plaintiff will not support the action: Cobb v. Carpenter (1809), 2 Camp. 13, note; Harris v. Booker (1827), 4 Bing. 96; though the defect in the plaintiff's title does not prejudice him, if he himself let the premises: Fisher v. Marsh (1865), 6 B. & S. 411, or if his title has been

recognised by payment of rent, Dolby v. Iles (1840), 11 A. & E. 335.

(b) Hall v. Burgess (1826), 5 B. & C. at p. 833; Gibbon v. Kirk (1841), 1 Q. B. 850; Smith v. Eldridge (1854), 15 C. B. 236; Dawes v. Dowling (1874), 31 L. T. 65; Sloper v. Saunders (1860), 29 L. J. Ex. 275; Churchward v. Ford (1857), 26 L. J. Ex. 354.

(c) See Edge v. Strafford (1831), 1 Cr. & J. 391; How v. Kennett (1835), 3 A. & E. 659; Lowe v. Ross (1850), 5 Ex. 553; Towne v. D'Heinriche (1853), 13 C. B. 892.

(d) Smallwood v. Sheppards, [1895] 2 Q. B. 627, 629.

(e) Smith v. Twoart (1841), 2 M. &. Gr. 841.

(f) See Gretton v. Mees (1878), 7 Ch. D. 839. find the occupation to be worth (g). The agreed rent, however, is only evidence of the amount to be paid, and under special circumstances — as where the lessor had failed in a material point to fulfil his part of the contract—the jury may ascertain the value of the land without regard to the rent reserved(h).

If the rent has been guaranteed in writing, the landlord will Guarantee have an action against the guarantor; but for this purpose there for rent. must be a contract immediately between the landlord and the Where A. addressed a letter to an intending tenant guarantor. undertaking to be responsible for the rent, and the landlord on sight of this letter accepted the tenant, it was held that, since there was no agreement between the landlord and A., the latter was not liable (i).

A tenant for years cannot be made personally liable in an Liability for action of debt for non-payment of a rent-charge issuing out of the land (k).

In an action against a tenant for rent in arrear, interest Interest on at the current rate from the day fixed for payment may be recovered (l).

By sect. 1 of the Real Property Limitation Act, 1874 (m), a Statute of limit of twelve years is prescribed for the recovery of "any land or rent"; but the word "rent," as used there, refers to rents in the nature of rent-charges, and does not include rents reserved on leases for years (n). Rents of the latter class are subject to the conflicting periods of limitation provided by 3 & 4 Will. 4, c. 27 (o), s. 42, and 3 & 4 Will. 4, c. 42, s. 3.

The forty-second section of c. 27 enacts that no arrears of rent 3 & 4 Will. 4, shall be recovered by any action but within six years next after the c. 27, s. 42. same shall have become due, or next after an acknowledgment of the same in writing shall have been given to the person entitled

(y) Mayor of Thetford ∇ . Tyler (1845), 8 Q. B. at p. 100.

(h) Tomlinson $\bar{\mathbf{v}}$. Day (1821), 2 Br. & B. 680.

(i) Nash v. Spencer (1896), 13 T. L. R. 78.

(k) Re Herbage Rents, Greenwich, [1896] 2 Ch. 811.

(1) 3 & 4 Will. 4, c. 42, s. 28; Skerry v. Preston (1813), 2 Chit. R. 245. See also as to levying under a writ of execution interest at 4 per cent. from the date of the judgment, R. S. C. 1883, Ord. 42, r. 16. As to interest payable by Crown tenants, see 10 Geo. 4, c. 50, s. 91.

(m) 37 & 38 Vict. c. 57.

(n) Grant ∇ . Ellis (1841), 9 M. & W. 113; Archbold v. Scully (1861), 9 H. L. C. p. 375; Irish Land Commissioners v. Grant (1884), 10 App. Cas. p. 26. See De Beauvoir v. Owen (1850), 5 Ex. 166, as to quit rents.

(o) Real Property Limitation Act, ' 1833.

DAGE

thereto or his agent, signed by the person by whom the same was payable or his agent.

3 & 4 Will. 4, c. 42, s. 3.
If lease is by deed, action to be brought within twenty years.

And the third section of c. 42 enacts that all actions of debt for rent upon an indenture of demise, and all actions of covenant or debt upon bond or other specialty, shall be commenced and sued within twenty years after the cause of such actions (p), but not after.

These enactments have been reconciled by treating the latter as engrafting an exception upon the former: so that while all remedies, real and personal, for arrears of rent, are $prim\hat{a}$ facie subject to the six years limitation of c. 27, s. 42 (q), actions on a covenant to pay rent or upon an indenture of demise can be brought for twenty years' arrears (r).

SECT. II.—REPAIRS.

								PAGE
(1)	Where there is no express agreement		•		•			332
• •	Obligations of tenant							332
	,, landlord		•		•			333
(2)	Where there is an express agreement					•		336
` '	Construction of general covenant to repair .				•			336
	,, covenant to put into repair			•		•		337
	,, covenant to keep in repair.		•		•		•	338
	,, covenant to yield up in repair			•				341
	,, conditional covenant to repair		•		•			342
	,, special agreements to repair	•		•			•	344
	Repairs by lessor		•		•		•	345
	Measure of damages for breach of covenant	•		•		•	•	346

(1) Where there is no Express Agreement.

Obligations of Tenant.

Tenants from year to year.

A tenant from year to year of a house is only bound to keep it wind and water-tight (s), to use it in tenant-like manner (t), and to make fair and tenantable repairs, such as putting in windows or doors that have been broken by him, so as to

- (p) Except in case of the disability or absence beyond seas of the person entitled to such action, or in case an acknowledgment has been made either in writing, signed by the person liable by virtue of such indenture, or his agent, or by part payment, or part satisfaction. See sects. 4, 5, of the Act 3 & 4 Will. 4, c. 42.
 - (q) See Hunter v. Nockolds (1850),

- 1 Mac. & G. 640; Humfrey v. Gery (1849), 7 C. B. 567.
- (r) Darley v. Tennant (1885), 53 L. T. 257; Donegan v. Neill (1885), 16 L. R. Ir. 309.
- (s) Auworth v. Johnson (1832), 5 C. & P. 239; Leach v. Thomas (1835), 7 C. & P. 327.
- (t) Horsefall v. Mather (1815), Holt, N. P. 7.

prevent waste and decay of the premises (u). He must not commit any waste (u), but he cannot be compelled to replace doors, windows or stairs worn out with age (x), or to re-roof the house, renew the main timbers, or execute other general or substantial repairs (y).

Tenants for terms of years are under a more extensive obligation to repair, since it appears that they are liable for permissive waste, though tenants for life are not (z).

Tenants for years or life.

An express agreement to repair excludes the implied contract to use the premises in a tenantable manner (a).

The liability of a tenant for the results of accidental fire is Accidental excluded by the Fires Prevention (Metropolis) Act, 1774, which enacts that no action, suit or process whatsoever shall be main- 14 Geo. 3, tained against any person in whose house, chamber, stable, barn, or other building, or on whose estate any fire shall accidentally (i.e., as the result of chance, and not of negligence or want of reasonable care (b)) begin; nor shall any recompense be made by such person for any damage suffered thereby, any law, usage or custom to the contrary notwithstanding: provided that no contract or agreement (c) made between landlord or tenant shall be hereby defeated or made void.

c. 78, s. 86. No action maintainable for accidental

This enactment, though occurring in a statute which in the main applies only to the metropolis, is of general application (d).

Obligations of Landlord.

Where there is no stipulation on the subject, a person who Liability of agrees to take a house must take it as it stands, and cannot

landlord to repair.

- (u) Per Lord Kenyon, C.J., in Ferguson v. Anon (1798), 2 Esp. 590. The liability of a copyhold tenant to repair under the custom of the manor is contractual, and survives against his personal representatives: Blackmore v. White, [1899] 1 Q. B.
- (x) Auworth \mathbf{v} . Johnson (1832), 5 C. & P. 239. See Torriano v. Young (1833), 6 C. & P. 8; Martin v. Gilham (1837), 7 A. & E. 540.
- (y) Ferguson v. Anon. (1798), 2 Esp. 590; Horsefall v. Mather (1815), Holt, N. P. 7; Leach v. Thomas (1835), 7 C. & P. 327.
 - (z) Infra, p. 352. As to the right

- of a tenant in common of a house to compel his co-tenant to contribute to the expenses of repairs, see Leigh v. Dickeson (1883), 12 Q. B. D. 194; 15 ib. 60.
- (a) Standen v. Chrismas (1847), 10 But contrà, White v. Q. B. 135. Nicholson (1842), 4 M. & Gr. 95.
- (b) Filliter v. Phippard (1847), 11 Q. B. 347. See Canterbury v. Reg. (1843), 12 L. J. Ch. 281, 284; Hicks v. Downing (1697), 1 Ld. Raym. 99.
 - (c) Infra, p. 337.
- (d) Richards v. Easto (1846), 15 M. & W. p. 251; Filliter v. Phippard,

compel the lessor to put it into a condition fit for habitation (e). As between the landlord and tenant of premises let from year to year, there is no obligation upon the former to do substantial repairs during the continuance of the lease, unless there is an express agreement to that effect (f); nor is there any such obligation where the premises are let for a term of years (g). If the demised premises are burnt down during the lease, the landlord is not bound to rebuild them (h), even though he has received insurance money (i), or has covenanted for quiet enjoyment by the tenant (k). Although the lessee's covenant to repair contains an express exception of damage by fire and tempest, it seems that the landlord is not bound to repair in either of the excepted cases (l).

Tenement house.

Where the landlord of a house let in apartments allows a tenant to use the roof as a drying ground, there is no obligation on him to keep the fence to the roof in repair (m); but it is otherwise with a common staircase, and an action will lie at the suit of a person having business with the tenants who is injured by its defective condition (n).

Landlord occupying part of premises.

A landlord who occupies the upper part of a house is not liable for an accidental defect in a gutter owing to which the goods of a tenant on the ground floor are spoiled by water (o); and similarly as to the escape of water from a cistern or waterpipe. The water is brought into the house for the common benefit of all the occupants, and the landlord is not liable unless actual negligence can be proved against him (p). But it would

- (e) Chappell v. Gregory (1864), 34
 Beav. 250. But in the case of weekly tenancies there appears to be an implied agreement that the landlord shall keep the premises in repair:

 Broggi v. Robins (1898), 14 T. L. R.
 439. As to the statutory implied condition as to the state of premises let to the working classes, see infra, p. 354, note(y). The landlord is liable for damage resulting from failure to observe this condition: Walker v.

 Hobbs & Co. (1889), 23 Q. B. D.
 458.
- (f) Gott v. Gandy (1853), E. & B. p. 847.
- (g) Arden v. Pullen (1842), 10 M. & W. 321.
- (h) Bayne v. Walker (1815), 3 Dow, 233.

- (i) Leeds v. Cheetham (1827), 1 Sim. 146; Lofft v. Dennis (1859), 1 E. & E. 474.
- (k) See Brown v. Quilter (1764), 2 Ambl. at p. 620.
- (l) Judgment of Lord Kenyon, C.J., in Weigall v. Waters (1795), 6 T. R. at p. 488.
- (m) Ivay v. Hedges (1882), 9 Q. B. D. 80.
- (n) Miller v. Hancock, [1893] ² Q. B. 177.
- (o) Carstairs v. Taylor (1871), L. R. 6 Ex. 217. Cf. Anderson v. Oppenheimer (1880), 5 Q. B. D. 602.
- (p) Ross v. Fedden, L. R. 7. Q. B. 661; Blake & Co. v. Woolf, [1898] 2 C. B. 426.

be going too far, it is conceived, to say that there is any general rule that a landlord, who occupies part of the premises, is under no liability to keep them in such repair as to render the demised part habitable (q); for, since the decision in Miller v. Hancock (r), it is probable that the landlord is, in some cases at any rate, liable for repairs which are necessary for the convenience and safety of the building as a whole.

Primâ facie the liability to a stranger for an accident due to Liability to the defective state of the premises is on the tenant (s); but it is shifted to the landlord where the duty to repair is by the lease imposed on him (t); and it was formerly held that the landlord was equally liable where the defect existed at the time of letting (u), and no duty to repair was imposed upon the tenant (v). But to charge the landlord it is necessary in either case that he should have notice of the defect (x). The continuance of a yearly or weekly tenancy is not a re-letting so as to make the landlord liable in respect of the state of the premises at the beginning of each year (y) or week (z). More recently, however, the view has prevailed that a landlord who is under no obligation to repair is not responsible to persons using the premises for injury due to want of repair (a).

The landlord is liable for a nuisance existing at the time of the demise (b), or created by the act of the tenant where the terms of the demise are an authority to create the nuisance (c). otherwise, since the landlord has no power or right of interference, he incurs no responsibility (d).

(q) See notes to Pomfret v. Ricroft 1 Wms. Saund. ed. 1871, 557; Carstairs v. Taylor, supra, p. 223; and cf. Colebeck v. Girdlers' Co. (1876), 1 Q. B. D. 234.

(r) [1893] 2 Q. B. 177.

(a) Pretty v. Bickmore (1873), L. R. 8 C. P. 401; Norris v. Catmur (1885), C. & E. 576. See Gwinnell v. Eamer (1875), L. R. 10 C. P. 658.

(t) Payne v. Rogers (1794), 2 H. Bl. 349; Mills v. Temple-West (1885), 1 T. L. R. 503.

(u) Todd v. Flight (1860), 9 C. B. N. S. 377; Robbins v. James (1863), 15 C. B. N. S. 221, 240; Nelson v. Liverpool Brewery Co. (1877), 2 C. P. D. 311.

(v) Pretty v. Bickmore, supra; Gwinnell v. Eamer, supra.

- (x) Gwinnell v. Eumer, supra; Broggi v. Robins (1899), 15 T. L. R.
- (y) Gandy v. Jubber (1865), 9 B. & S. p. 15.
- (z) Bowen v. Anderson, [1894] 1 Q. B. 164; overruling Sandford v. Clarke, 21 Q. B. D. 398.
- (a) Lane v. Cox, [1897] 1 Q. B. 415; Copp v. Aldridge & Co. (1895), 11 T. L. R. 411.
- (b) R. v. Pedley, 1 A. & E. 822; Gandy v. Jubber (1864), 5 B. & S.
- (c) Harris v. James (1876), 45 L. J. Q. B. 545.
- (d) Judgment of Crompton, J., in Gandy v. Jubber (1864), 5 B. & S. p. 88; Rich v. Basterfield (1847), 4 C. B. 783

strangers.

(2) WHERE THERE IS AN EXPRESS AGREEMENT.

Construction of general covenant to repair.

Under a general covenant to repair a house, the tenant must keep it in substantial repair, according to the age and nature of the building (e).

It is well settled that a general covenant to repair must be construed to have reference to the condition of the premises at the time when the covenant begins to operate (f) and the jury may inquire whether the house was new or old at the time of the demise (g). No tenant is bound to leave for his landlord a new house, but the house which he took, in a state of fit repair as such house (h).

Repair of old premises.

If the house demised is an old one, the tenant is only bound to keep it up as an old house, and is not obliged to give the landlord the benefit of new work (i). It is not meant, in fact, that the old building is to be restored in a renewed form at the end of the term, so as to make the value of it greater than it was at the commencement of the term. Diminution in value, resulting from the natural operation of time and the elements, falls upon the landlord; but the tenant must take care that the premises do not suffer more damage than the operation of these causes would effect, and he is bound, by seasonable applications of labour, to keep the house as nearly as possible in the same condition as when it was demised (k).

Hence, where the tenant has covenanted to repair drains, he is not bound to pay for the construction of a new drain by the local authority under the Public Health Act, 1875 (l). And the tenant is liable for repairs only, and not for alterations, such as laying a new floor on an improved plan (m). An agreement to keep a piece of ornamental water in good and substantial repair is performed by keeping the water from bursting its banks and by maintaining the sluices in working order (n). An agreement

(f) Per Parke, B., in Walker v. Hatton (1842), 10 M. & W. p. 258.

Jones (1832), 1 Moo. & R. at p. 175. (k) See summing up of Tindal. C.J., in Gutteridge v. Munyard (1834),

1 Moo. & R. at p. 336.

(l) Lyon v. Greenhow (1892), 8 T. L. R. 457.

(m) Soward v. Leggatt (1836), 7 C. & P. 613.

(n) Bird v. Elwes (1868), L. R. 3 Ex. 225.

⁽e) Harris v. Jones (1832), 1 Moo. & R. 173; Stanley v. Towgood (1836), 3 Bing. N. C. 4.

⁽g) Stanley v. Towgood, supra. See Mantz v. Goring (1838), 4 Bing. N. C. 451.

⁽h) Scales v. Lawrence (1860), 2 F. &. F. 289.

⁽i) Per Tindal, C.J., in Harris v.

to do "necessary repairs" imposes on the tenant the burden of doing all repairs which are requisite during the term (o).

Questions of repair are questions of fact for the jury, to be Breach of decided on what are the substantial merits of the case rather repair. than on strict rights. The landlord is not to claim for every trivial defect (p). A breach of the covenant is not excused because the covenantor has bonâ fide employed persons to repair. If his agents have not in fact repaired, there is no equity to relieve against the breach (q).

Unless the covenant by the tenant to repair contains an express Where exception of damage by fire or other casualty, he will be bound burned down. to rebuild or repair the demised premises if they should be **burned** down (r), or otherwise destroyed (s), or injured during the term. Although the lease contains a covenant by the tenant to insure the premises in a specified sum, he is still liable on the covenant to repair, and his responsibility is not limited to the sum named in the covenant to insure (t). But a tenant who has to leave the premises in the same state of repair as when delivered to him need not rebuild so as to improve the premises, and where the rebuilding would cost 1,635l. and would increase the value by 600l., the damages for breach of the covenant were assessed at 1,035l. (u).

Under a covenant to put into habitable repair, the tenant must, Covenant to if necessary, place the demised premises in a better state than that in which he found them (x). He is not bound to make a new house, but regard being had to the state of the premises at the time of the agreement and to their situation, and to the class of persons who are likely to inhabit them, he is to put them into a condition fit for a tenant to inhabit (x). A covenant "forthwith" to put premises into complete repair is not construed as referring

put into repair.

(o) Truscott v. Diamond Rock Boring Co. (1881), 20 Ch. D. 251.

(p) Scules v. Lawrence (1860), 2 F. & F. 289, per Willes, J. As to the effect on the tenant's liability of a promise by the landlord before demise to do some repairs, see Haldane v. Newcomb (1863), 12 **W**. R. 135.

(4) Nokes v. Gibbon (1856), 3 Drew. 681. As to statutory relief, see infra, Chap. VI., Sect. 2 (3) (iv.).

(r) E. of Chesterfield ∇ . D. of Bolton (1739), Comyn, 627; Pym v. **Blackburn** (1796), 3 Ves. 34; Bullock v. Dommitt (1796), 6 T. R. 650; Digby v. Atkinson (1815), 4 Camp. 275. See Clark v. Glasgow Ass. Co. (1854), 1 Macqueen, 668, p. 678; Gregg v. Coates (1856), 23 Beav. 33.

(s) Brecknock Co. v. Pritchard (1796), 6 T. R. 750; Manchester Bonded Warehouse Co. v. Carr (1880), 5 C. P. D. 507.

(t) Digby v. Atkinson (1815), 4 Camp. 275, 278.

(u) Yates ∇ . Dunster (1855), 11 Ex.

(x) Belcher \forall . M'Intosh (1839), 8 C. & P. 720.

to any specific time; it is for a jury to say, upon a reasonable construction, whether it has been performed (y). A covenant to put in repair can only be broken once for all, and therefore if a breach has been committed in the time of the lessee, and damages recovered from him by the lessor in respect of such breach, the assignee of the lessee will not be liable (z).

Covenant to keep in repair. A covenant to keep premises in good repair binds the lessee to put them into good repair with reference to their age and class (a), to maintain them in that state, and in that state to deliver them up at the end of the term (b). He must have them constantly in repair, and if at any time during the term they are out of repair, he is guilty of a breach of covenant, which is the proper subject of an action before the expiration of the lease (c). Accordingly, it is no defence for an assignee to say that the premises were out of repair at the time when he took possession (d). But under a repairing and painting covenant the lessee is not bound to fill up cracks in plaster and holes made by nails within the period fixed for redecorating (e).

Breach of covenant.

As this covenant is a continuing one, the recovery of damages upon it in a previous action is no bar to a subsequent action against the tenant or his assignee, so long as the premises are out of repair, but the fact may be used in mitigation of damages (f). It is a breach of this covenant to pull down the demised premises either wholly or partially, or to open a doorway in a wall (g), unless by the terms of the lease it is implied that additions and improvements are to be made (h). Where there was a covenant

(y) Doe v. Sutton (1841), 9 C. & P. 706.

(a) Saner v. Bilton (1878), 7 Ch. D.

(c) Luxmore v. Robson (1818), 1 B. & A. 584, 585.

(d) Plummer v. Johnson (1902), 18

T. L. R. 316.

(e) Perry v. Chotzner (1893), 9 T. L. R. 488.

(f) Coward v. Gregory (1866), L. R. 2 C. P. 153. As to continuing breach, see Morris v. Kennedy, [1896] 2 Ir. R. 247.

(g) Gange v. Lockwood (1860), 2 F. & F. 115; Doe v. Jackson (1817). 2 Stark. 293; Doe v. Bird (1833), 6 C. & P. 195. Cf. Borgnis v. Edwards (1860), 2 F. & F. 111.

(h) See Doe v. Jones (1832), 4 B. & Ad. 126. As to damages on the covenant, where the premises have been condemned by the local authority and demolished, see Re Serle, [1898] 1 Ch. 652; 46 W. R. p. 442.

⁽z) See Coward v. Gregory (1866), L. R. 2 C. P. 153. So a building covenant—to erect specified buildings within twelve months—is not a continuing covenant, but is broken once for all at the end of the twelve months, if the buildings have not then been erected: Jacob v. Down, [1900] 2 Ch. 156, at p. 161.

p. 821.
(b) Payne v. Haine (1847), 16
M. & W. 541; Burdett v. Withers (1837), 7 A. & E. 136; Woolcock v. Dew (1858), 1 F. & F. 337.

by the lessee to complete houses within two months and keep them in repair, and the houses were never finished, it was held that the assignee of the reversion could sue in respect of the breach of the covenant to repair, though possibly not in respect of the covenant to finish, the breach of this covenant being complete before the assignment (i). In a recent case (k), the lessees of a piece of land had covenanted that they would, within twelve months from the date of the lease, erect specified buildings on the land, and also would "at all times during the said term keep the said messuages and premises so to be erected as aforesaid in good and substantial repair." The buildings were never erected. It was held that the repairing covenant imposed on the lessees an obligation to do from time to time all things necessary to effect the performance of that covenant, including the erection of the buildings, if not erected within the period prescribed in the building covenant; and that accordingly there was, as long as the buildings remained unerected, a continuing breach of the repairing covenant.

Upon a covenant to well and substantially repair, uphold and Covenant to maintain, and the premises so repaired to yield up at the end of substantially the term, the tenant is not bound to make good a defect caused repair. by the natural operation of time and the elements on a house the original construction of which was faulty (l). However large the words of the covenant may be, a covenant to repair a house is not a covenant to give a different thing from that which the tenant took when he entered into the covenant. If a tenant takes a house which is of such a kind that, by its own inherent nature, it will, in course of time, fall into a particular condition, the effects of that result are not within the tenant's covenant to Similarly a covenant by a lessor to keep drains and sewers in good tenantable repair does not extend to a rectification of a structural defect, but is confined to keeping up the drains as they existed in the required state of repair (n). A tenant who has covenanted to substantially repair, uphold and maintain a house is bound to paint the inside woodwork, &c. (0).

⁽i) Bennett v. Herring (1857), 3 C. B. N. S. 370.

⁽k) Jacob v. Down, [1900] 2 Ch. 156, at pp. 161, 162.

⁽¹⁾ Lister v. Lane and Nesham, [1893], 2 Q. B. 212.

⁽m) Per Lord Esher, M.R., ib. at

pp. 216, 217. This case was followed in Wright v. Lawson, C. A. (1903), W. N. 108; 19 T. L. R. 203, 510.

⁽n) Huggall v. McKean (1884), C. & E. 391.

⁽o) Monk v. Noyes (1824), 1 C. & P. **265.**

Tenantable repair.

But a covenant to well and sufficiently repair, &c., paint, &c., and keep the demised premises with all needful reparations, does not necessarily involve the entire repapering and painting (p).

Under an agreement to keep a house in "good tenantable repair," and so leave the same at the expiration of the term, the tenant's obligation is to put and keep the premises in such repair as, having regard to the age, character, and locality of the house, would make it reasonably fit for the occupation of a reasonably-minded tenant of the class who would be likely to take it, and it is immaterial that the house was not in tenantable repair when the tenancy began (q). Under such an agreement the tenant is liable to paint sufficiently to preserve the woodwork, but he is not necessarily bound to paper and paint so as to leave the house in the same state of decorative repair as when he took it (r). An agreement by the landlord to put the premises into "good tenantable repair" does not bind him to put them into such repair for any special purpose not stipulated for in the agreement (s).

What things to be repaired.

An agreement to keep and leave the demised premises in good and substantial repair extends to all things which are properly a part of the premises, as the pavement of a courtyard (t), or, in a lease of a mill, the mill-wheel (u); and where there is a general covenant by the lessee to repair and keep and leave in repair, it will be inferred that he undertakes to repair buildings which may be erected during the term (x); and, à fortiori, where the covenant extends to "buildings erected and built or to be erected and built upon the demised ground or any part thereof" (y). On the other hand, a particular covenant to repair the demised buildings will be construed as referring only to existing buildings (z); for a covenant to repair, which in its terms applies to certain specified buildings, must not be extended beyond those buildings (a): while a covenant to leave the demised premises

- (p) Moxon v. Townshend (1886), 2 T. L. R. 717; affirmed, 3 T. L. R. 392.
- (q) Proudfoot v. Hart (1890), 25 Q. B. D. 42.
- (r) Crawford v. Newton (1887), 36 W. R. 54.
- (s) McClure v. Little (1868), 19 L. T. 287.
- (t) Pyot v St. John (1610), Cro. Jac. 329.
 - (u) Openshaw v. Evans (1884), 50

L. T. 156.

- (x) Douse v. Earle (1689), 3 Lev. 264; 2 Ventr. 126; judgment of Channell, B., in Cornish v. Cleife (1864), 34 L. J. Ex. at p. 22; Brown v. Blunden (1684), Skin. 121.
- (y) Hudson v. Williams (1879), 39 L. T. 632.
- (z) See Cornish v. Cleife (1864), 3 H. & C. 446.
- (a) Per Bigham, J., in Smith v. Mills (1899), 16 T. L. R. 59.

with all new erections well repaired has been held under special circumstances to extend to new erections only (b).

A covenant to yield up in repair buildings erected during the Covenant to term includes buildings erected for trade and manufacture if yield up in repair. affixed to the freehold (c); and where a lessee who has erected fixtures takes a new lease with covenant to repair, the fixtures fall within the covenant unless it is clearly shown that they were not intended to pass under the second demise (d). removal of fixtures which the tenant does not immediately replace is not in itself a breach of the covenant to repair and deliver up, if they can be replaced before the end of the term(e).

A covenant to deliver up a house at the end of the term "in Reasonable as good repair and condition as it now is in, reasonable wear and wear and tear tear excepted," means that the tenant is to be bound, at the end of the tenancy, to deliver up the premises in as good condition as they were in at the beginning of it, subject to the exception of dilapidations caused by the friction of the air, by exposure, and by ordinary use. Outside painting is a thing which the tenant is not bound to do under such a covenant (f). A covenant to Covenant to rebuild premises requires the rebuilding of the whole; to rebuild rebuild. some and repair some is not enough (g). But a covenant to pull down a house and build a new one does not require the erection of the new house in the same manner, and style, and shape, and with same elevation as the old (h). And where the covenant is to put and keep in repair and take down as occasion may require and build new houses, it is enough to repair so as to make the houses substantially as good as new houses (i).

excepted.

Covenants on the part of the tenant to repair and keep in repair General the demised premises during the term, and to repair specified defects within a certain time after notice (k), are considered separate repair on and independent covenants, if they severally make a complete

covenant and covenant to notice.

⁽b) Lunt v. Norris (1757), 1 Burr. 287.

⁽c) Naylor v. Collinge (1807), 1 · Taunt. 19.

⁽d) Thresher v. E. London Waterworks Co. (1824), 2 B. & C. 608.

⁽e) Doe v. Davis (1851), 15 Jur. 155. (f) Terrell v. Murray (1901), 17 T. L. R. 570.

⁽g) City of London v. Nash (1747), 3 Atk. 512.

⁽h) Low v. Innes (1864), 4 D. J. & S. 286.

⁽i) Evelyn v. Raddish (1817), 7 Taunt. 411.

⁽k) The notice may be suspended by the pendency of negotiations between the parties: Hughes v. Metrop. Ry. Co. (1877), 2 App. Cas. 439. See Doe v. Brindley (1832), 4 B. & Ad. 84.

sentence, or are found in different parts of the same deed(l); but if the whole stands in the same sentence it may be held to be one entire covenant (l). Where the covenants are independent, the right of entry attaches for breach of the general covenant though no notice has been given under the special covenant (m).

Where the lessor has a remedy for recovering the expenses of repairing, and elects to do the repairs himself, he waives the forfeiture under the general covenant (n), and after such repairs he cannot recover on the general covenant, inasmuch as the premises are not out of repair at the time of bringing the action, nor on the special covenant if no proper notice has been given (n). Hence mesne lessees, who repair to avoid a forfeiture, may find themselves without remedy against the sublessees (o).

A covenant to repair during the term after notice, and to leave in repair at the end of the term, constitutes distinct liabilities, and notice is not necessary to sustain an action for non-repair at the end of the term (p).

Conditional covenants to repair.

A covenant by the lessee to repair is sometimes made conditional on the performance of some act by the lessor; as, for instance, on his first putting the premises into repair (q); but it may be a question whether it is a single conditional covenant, or whether there are independent covenants by the lessee and lessor respectively. Where the tenant covenants to keep in repair the demised premises, the same being first put into repair by the landlord (r), or the landlord allowing timber (s), the repair or allowance of timber by the landlord is a condition precedent; though similar words have been held to raise an independent covenant on the part of the lessor to put premises into repair on which the tenant can sue (t).

Where the covenant is conditional, the lessee is not liable for the non-repair of any part of the premises until the lessor has

(1) Judgment in Horsefall v. Testar (1817), 7 Taunt. 385, at p. 388.

(m) Baylis v. Le Gros (1858), 4 C. B. N. S. 537; and as to the effect of notice under the special covenant in waiving the forfeiture for breach of the general covenant, see *infra*, Chap. VI., Sect. 2 (3) (iii.).

(n) Doe v. Lewis (1836), 5 A. & E. 277.

(o) Williams v. Williams (1874), L. R. 9 C. P. 659. (p) Harslet v. Butcher (1623), Cro. Jac. 644.

(q) Slater v. Stone (1623), Cro. Jac. 645.

(r) Neale v. Ratcliffe (1850), 15 Q. B. 916.

(s) Thomas v. Cadwallader (1714), Willes, 496; though see Mucklestone v. Thomas (1739), Willes, 146.

(t) Cannock v. Jones (1849), 3 Ex. 233.

entirely performed his condition (u), though, if the condition is for the supply of material, it is sufficient that the lessor is ready to supply the material when required (x). A covenant by the tenant to repair, "having or taking sufficient house-bote, hedgebote, &c., for the doing thereof, without committing any waste or spoil," is an absolute covenant to repair free from condition precedent that there shall be a sufficient supply of that kind of timber on the premises (y). And where the tenant agrees to keep farm buildings in repair, and the landlord by a separate clause agrees, on notice from the tenant, to find materials, the tenant must repair and, if necessary, sue the landlord on his covenant. Hence the tenant cannot get damages from the landlord for injury to his goods due to the non-repair of the roof (z).

Where the tenant is to expend money on improvements to the Approval of approbation of a surveyor to be named by the landlord, the appointment of a surveyor is a condition precedent to the tenant's liability(a); and similarly with respect to the completion of houses (b). But although the surveyor is not satisfied, it is no forfeiture if in the opinion of those who try the cause he ought to have been satisfied (c). Where, however, the lessee is to retain out of his rent the cost of improvements to be done in a substantial manner and to the approval of the lessor, such approval is not a condition precedent to the right to retain the rent (d). Where the lessee covenants to do certain work which is to be left to the superintendence of named persons, the covenant is absolute, the specified superintendence not being a condition precedent or concurrent (e).

The liability of the lessee upon a covenant to repair com- Commencemences only from the execution of the lease by the lessor. is not liable for acts done before the time of the execution of the liability. lease, although the habendum of the lease states the premises to be held from a day prior to its execution (f).

He lessee's

```
(u) Neale v. Ratcliffe (1850), 15
Q. B. 916; Cannock v. Jones (1849),
3 Ex. 233. See Counter v. Macpher-
son (1845), 5 Moore, P. C. C. 83;
Coward v. Greyory (1866), L. R. 2
C. P. 153.
```

⁽x) Martyn v. Clue (1852), 18 Q. B. 661.

⁽y) Dean and Chapter of Bristol ∇ . Jones (1859), 1 E. & E. 484.

⁽z) Tucker \mathbf{v} . Linger (1882), 21 Ch. D. 18.

⁽a) Coombe ∇ . Green (1843), 11 M. & W. 480.

⁽b) Hunt v. Bishop (1853), 8 Ex. 675.

⁽c) Doe v. Baker (1848), 2 C. & K. 743.

⁽d) Dallman \forall . King (1837), 4 Bing. N. C. 105.

⁽e) Cannock v. Jones (1849), 3 Ex. 233; 5 Ex. 713; 3 H. L. C. 700.

⁽f) Shaw v. Kay (1847), 1 Ex. 412.

Cases illustrating construction of agreements as to repairs. The following cases illustrate the construction of special agreements relating to repairs:—

- COVENANT by lessee to keep in repair the premises and all erections, buildings and improvements erected thereon during the term, and yield up the same in good repair. The lessee cannot remove a verandah erected by him, the lower part of which is attached to posts fixed in the ground (g).
- COVENANT by lessee of a farm well and substantially to repair and keep in good substantial repair, and so well and substantially repaired to yield up at the end of the term. The tenant is bound to give up the premises in as good a state of repair as they were in when he took possession, and they must be inferred to have been then in a tenantable state (h).
- AGREEMENT by tenant to leave a farm in as good condition as he found it. Is an agreement to leave it in tenantable repair if he found it so (i).
- Covenant by lessee of a coal mine at the end of the term to yield up the works and mines, and all ways and roads, in such good repair, order and condition, that the works may be continued and carried on by the lessor. Does not extend to movable chattels, such as iron tramplates fastened to wooden sleepers not let into the ground (k).
- COVENANT by lessee of farm to repair and leave in good repair all buildings to be erected thereon during the term. Extends to a farm-house erected during the term by permission of the lessor, who is lord of the manor, on the waste adjoining the demised premises (l).
- COVENANT by lessor of a house to repair and keep in repair all the external parts of the demised premises. A partition wall dividing the demised house from an adjoining house is an external part of the premises within this covenant (m).
- COVENANT by lessee of farm and cottages to keep and uphold and maintain the premises in good and tenantable position, and give them up in such repair. Lessee is bound to keep up
- (g) Penry v. Brown (1818), 2 Stark. 403.
- (h) Brown v. Trumper (1858), 26 Beav. 11, 15.
- (i) Winn v. White (1773), 2 W. Bl. 840. And furniture let upon similar terms, if clean, must be left clean: Stanley v. Agnew (1844), 12 M. & W. 827.
- (k) Beaufort (Duke of) v. Bates (1862), 3 D. F. & J. 381.
- (l) White v. Wakley (1858), 26 Beav. 17.
- (m) Green v. Eales (1841), 2 Q. B. 225. And as to covenant by lessor to repair, subject to certain expenses being borne by the tenant, see Beer v. Santer (1861), 10 C. B. N. S. 435.

the cottages in situ, and to repair if ruinous, so as to keep them in the same condition as at the time of demise, provided it was a tenantable condition. If they are pulled down, he is liable for their value as they stood, without reference to the general improvement of the farm by their removal (n).

COVENANT by lessor that, in case the demised premises shall be burned down, he will "rebuild and replace" the same in the same state as they were in before the fire. The lessor is only bound to restore the premises to the state in which they were when he let them, and is not obliged to rebuild an additional story subsequently erected by the tenant (o).

COVENANT by lessee as often as necessary well and sufficiently to repair, paint, and cleanse the demised premises, and keep and leave the same in such repair, reasonable wear and tear excepted. If the lessee has repaired a reasonable time before leaving, he is only bound in addition to repair actual dilapidations and to cleanse the old paint, but is not bound to repaint (p).

Where the lessor has covenanted to repair a part of the Notice to premises the condition of which he cannot readily ascertain without entry, the main timbers, for instance, or the roof, the lessee cannot charge him with breach unless notice of the want of repair has been given (q). And similarly as to drains, where the lessor has no means of knowing a defect and the lessee has (r).

lessor to tepair.

Where a lessee covenanted to bear a proportion of the expense Repair at of putting and keeping roads in order, it was held that he was joint expense of lessor and not liable if the lessor in repairing changed the character of the lessee. road, as from a flint road to a macadamized road (s).

A landlord cannot lawfully enter upon his tenant's premises Entry by to execute repairs unless some express stipulation to that effect repair. has been made (t), even though he is a termor and liable to

(n) Woolcock v. Dew (1858), 1 F. & F. 337. (o) Loader v. Kemp (1826), 2 C. & P. 375. (p) Scales ∇ . Lawrence (1860), 2 F. & F. 289. (q) Makin v. Watkinson (1870), L. R. 6 Ex. 25; L. & S. W. Ry. Co. v. Flower (1875), 1 C. P. D. p. 85; Manchester Bonded Warehouse Co. v. Curr (1880), 5 C. P. D. 507. See per

Mansfield, C.J., in Moore v. Clark (1813), 5 Taunt. p. 96; and Tredway v. Machin (1904), 20 T. L. R. 726, C. A.

(r) Hugall v. M'Lean (1885), 53 L. T. 94.

(s) Mayor of London v. Barnes (1896), 12 T. L. R. 135.

(t) Barker v. Burker (1829), 3 C. & P. 557.

forfeiture under the superior lease, and though he has the consent of the sub-tenants (u); and his entry will be restrained by injunction (u). But where the lessor has covenanted to repair, this implies a licence by the tenant for him to enter for a reasonable time to do the repairs (x).

Entry to view state of repair. A provision in a lease that the landlord may enter the demised house "at convenient times" to view the state of repair is not contravened by his being excluded from some of the rooms if he has given no notice of his coming (y).

Enforcement of covenant to repair.

The performance by a lessee of a covenant to repair cannot be enforced directly and specifically (z). But in Lane v. Newdigate (a) Lord Eldon indirectly enforced, by means of an injunction, the repairing of the banks of a canal and its stop-gates.

Measure of damages for breach of covenant.

i. During currency of

term.

If the lessor sues during the currency of the term for breach of the covenant to repair (b), it has been held that the damages are not the amount which would be required to put the premises into repair, but the amount to which the saleable value of the reversion is injured by the non-repair of the premises (c), and the claim ought to show the term for which the premises are demised (d). No hard-and-fast rule, however, can be laid down as to the damages recoverable in such a case. All the circumstances must be taken into consideration, and the damages must be assessed at such a sum as reasonably represents the damage which the lessor has sustained by reason of the breach of Hence, where a sublessor is suing a sublessee covenant (e). who took with notice of the original lease, it is proper to take into account the liability of the sublessor under the covenants in such lease (e). Where the landlord, with the consent of the tenant, does the repairs himself, he can recover the amount he

(u) Stocker v. Planet Building Society (1879), 27 W. R. 877.

(x) Saner v. Bilton (1878), 7 Ch. D. 815.

(y) Doe v. Bird (1833), 6 C. & P. 195.

(z) Hill v. Barclay (1810), 16 Ves. at p. 505.

(a) (1804),10 Ves. 192. See, however, Lord Esher's observations on that case in Ryan v. Mutual Tontine, &c., Association, [1893] 1 Ch. at p. 124.

(b) As to damages where the lessor recovers the land for breach of a building agreement and lets again, see Oldershaw v. Holt (1840), 12 A. & E. 590; Marshall v. Mackintosh

(1898), 46 W. R. 580.

(c) Smith v. Peat (1853), 9 Ex. 161. See Doe v. Rowlands (1840), 9 C. & P. 734; Mills v. East London Union (1872), I. R. 8 C. P. 79; Henderson v. Thorn, [1893] 2 Q. B. 164. The contrary opinion expressed by Lord Holt in Vivian v. Champion (1705), 2 Ld. Raym. 1125, 1 Salk. 141, has not been followed.

(d) Turner v. Lamb (1845), 14 M. & W. 412.

(e) ('onquest v. Ebbetts, [1896] A. C. 490, per Lord Herschell, p. 494. See Ebbetts v. Conquest, [1895] 2 Ch. 377.

has reasonably spent, notwithstanding that, owing to subsequent events, it turns out that the repairs were useless (f).

But where the term has expired, and the lessor is suing on ii. After the covenant to yield up the premises in repair, the measure of expiration of term. damages is the cost of putting the premises into the state of repair in which they ought to have been left (g); and this result is not affected by the circumstance that the lessor, by reason of the terms of a fresh lease granted to another lessee, does not in fact require to have the repairs done (h); or that he is himself effecting structural alterations in the premises (i); or that, by reason of change in the surrounding property, the house will be as valuable for letting if some of the repairs required by the covenant are omitted or done at a cheaper rate (k); or that, in an action brought during the currency of the term, damages for non-repair have already been recovered, except that the circumstances may be such as to make it just to take the amount of those previous damages into account (l).

Ordinarily the measure of damages for breach of a covenant to do a specific act, as to build a wall, is not the cost of performance, but the pecuniary difference which non-performance makes to the covenantee (m).

The landlord may recover, in addition to the amount of the Rent during actual expense of the repairs, a compensation for the loss of the use of the premises while they are undergoing repair (n). seems that this rule does not apply in favour of the lessee, and where the lessor neglects an obligation to repair, the lessee cannot recover the expenses of other premises to which he removes while he is having the repairs done (o).

An action for breach of covenant to repair is an action in which Action for a contract or liability affecting land is sought to be enforced, and covenant. the writ may be served out of the jurisdiction if the premises are within the jurisdiction (p).

```
(f) Colley v. Streeton (1823), 2
B. & C. 273.
```

(g) Joyner v. Weeks, [1891] 2Q.B. 31. (h) Joyner v. Weeks, [1891] 2 Q. B.

31; Rawlings v. Morgan (1855), 18 C. B. N. S. 776.

(i) Inderwick v. Leech (1884),C. & E. 412.

(k) Morgan v. Hardy (1886), 17 Q. B. D. 770.

(I) Ebbetts v. Conquest (1900), 82 L. T. 560.

(m) Wigsell v. School for Blind (1882), 8 Q. B. D. 357.

(n) Woods v. Pope (1835), 6 C. & P. 782. See 1 Bing. N. C. 467; Birch v. Clifford (1891), 8 T. L. R. 103.

(o) Green v. Eales (1841), 2 Q. B. **225.**

(p) Tassell ∇ . Hallen, [1892] 1 Q. B. 321; R. S. C. Ord. 11, r. 1 (b). As to pleading a breach of a covenant to repair, see Wright v. Goddard (1838), 8 A. & E. 144.

SECT. III.—WASTE.

]	PAGE
1)	Voluntary		•		•	•	•		•		•		•		•		•		•	348
	Trees .			•						•		•		•		•		•	•	348
•	Meliorating	W	ste										•		•		•		•	350
(2)	Permissive .							•						•		•			•	351
(3)	Remedies for	•	•			•	•		•		•		•		•				•	352

(1) VOLUNTARY WASTE.

1. Acts of destruction.

There are two kinds of legal waste (q)—voluntary and permissive (r). A tenant commits voluntary waste by acts of destruction, such as pulling down houses, or removing wainscots, doors or windows, furnaces, or the like, which have been annexed. or fixed to the house, whether by himself or by the landlord (s). The general rule is, that where a lessee, having annexed a personal chattel to the freehold during his term, afterwards takes it away, it is waste (t). But no use of a tenement which is reasonable and proper, having regard to the class to which it belongs, is waste (u). Hence the tenant is not liable for waste if a building breaks down in the course of reasonable use; and any use is reasonable if it is for a purpose for which the property was intended to be used, and if the mode and extent of the user were apparently proper, having regard to the nature of the property, and to what the tenant knew or ought, as an ordinary business man, to have known of it (x). If the user of the property is expressly sanctioned by the lessor, there can be no question of waste (y); nor, it seems, is the tenant in such a case liable (at least to the extent of incurring a forfeiture for the waste), even though he fails to take the steps he has engaged to take to avoid damage through the waste (z).

Trees, &c.

Waste is committed by cutting down, destroying, or topping timber trees—that is, oak, ash, and elm (a) twenty years

(q) As to waste in relation to mines, see supra, p. 211; and, as to "equitable waste," which has been defined as an excessive or unconscionable use of a legal power of committing waste (such as a tenant for life without impeachment of waste formerly had), see Encyclopædia of Laws of England, Vol. 12, p. 542, and Judicature Act, 1873, s. 25 (3).

(r) Co. Litt. 53 a.

(s) Edge v. Pemberton (1843), 12 M. & W. 187; Co. Litt. 53 a.

- (t) Buckland v. Butterfield (1820).
- 2 Br. & B. 54, 58. (u) Suner v. Bilton (1878), 7 Ch. D.
- 815, 821.
 (x) Manchester Bonded Warehouse
 Co. v. Carr (1880), 5 C. P. D. 507,
 512.
- (y) Meux v. Cobley, [1892] 2 Ch. p. 262.
- (z) Doe v. Morris (1809), 2 Taunt. 52.
 - (a) Co. Litt. 53 a.

old(b), and such other trees—e.g., beech—as by special custom are counted timber (c). The age at which trees become timber may be varied by custom (d). The cutting of other trees is waste only when they afford shelter to the house, or serve some special purpose, as, in the case of willows sometimes, supporting the bank of a stream against the water (e).

But the cutting of trees which are not timber trees, and of timber trees under twenty years' growth (f), and of underwood generally, must be done in a seasonable manner, and so as not to prevent the trees or underwood from growing again (g). If the tenant is going to graze cattle in fields containing young . trees and shrubs, he ought to tell the landlord, so that he may protect them by fences (h).

It is waste to destroy a quickset hedge of whitethorn (i); or to plough up strawberry beds in full bearing (k).

Waste can only be committed of the thing demised; hence. cutting down trees excepted out of a demise is not waste (l). On the other hand, it has been held that the tenant is not liable in trespass for damage done by his cattle to trees excepted out of the demise (m).

The lessee of a house may dig for gravel or clay for the Repairs, &c. reparation of the house, and for the same purpose may take convenient timber-trees (n), though he may not cut down timber in anticipation to be used for repairs as occasion requires (o).

. Further, it is, technically, waste to change the nature of the 2. Changing thing demised (p); as, for instance, by demolishing an old nature of the demised building and erecting in place of it new buildings of greater premises.

- (b) Aubrey v. Fisher (1809), 10 East, 446; Dunn v. Bryan (1872), Ir. R. 7 Eq. 143.
- (c) Aubrey Fisher, supra; v. Honywood v. Honywood (1874), L. R. 18 Eq. 306, 309; Dashwood v. Magniac, [1891] 3 Ch. 306.

(d) Honywood v. Honywood, supra. (e) Co. Litt. 53 a; Phillipps v. Smith (1845), 14 M. & W. 589; Dunn v. Bryan, supra.

(f) Phillipps v. Smith (1845), 14 M. & W. 589; Dunn v. Bryan (1872), Ir. R. 7 Eq. 143.

(g) Co. Litt. 53 a; Phillipps v. Smith, supra; Gage v. Smith (1614), Godb. 209; Dunn v. Bryan, supra.

(h) Fowler v. Johnstone (1892), 8

- T. L. R. 327.
 - (i) Co. Litt. 53 a.
- (k) Watherell ∇ . Howells (1808), 1 Camp. 227.
- (1) Goodright \forall . Vivian (1807), 8 East, 190, 192.
- (m) Glenham v. Hanby (1701), 1 Ld. Raym. 739. But see Fowler v. Johnstone, supra.
- (n) Co. Litt. 53 b; Simmons v. Norton (1831), 7 Bing. 640.
- (o) Gorges v. Stanfield (1698), Cro. Eliz. 593.
- (p) Lord Darcy v. Askwith (1618), Hob. 234; referred to in West Ham, &c., Board v. East London Waterworks Co., [1900] 1 Ch. 624.

value (q); or converting a corn-mill into a fulling-mill (r); or turning ancient meadow or pasture into arable land (s); or arable land into wood, or conversely (t); or inclosing and cultivating waste land included in the demise (u).

Meliorating waste.

But although the above acts are technically waste, they do not as a rule constitute actionable waste, unless they in fact cause injury to the reversion (x); nor, apart from such injury, will they be a ground of forfeiture (y). Where the lessee improves the demised premises, as by converting storehouses into dwellinghouses of much greater value, this is said to be meliorating waste (z), and the Court will not in general interfere to restrain the alteration by injunction (a). So where the lessee erects a building without the consent of the lessor (b). The test of actionable waste is whether the alterations complained of constitute an injury to the inheritance (b). If they do not, it is no answer for the landlord to say that they benefit the tenant and put money into his pocket (c). Hence the tenant may remove and sell flints thrown up in the ordinary course of agriculture (c); and, on a farm near London, he may, it seems, convert the demised premises into a market garden and erect glass-houses thereon (d). And an injunction will not be granted where the acts are partly meliorative and partly trivial (e).

Where, however, the lessees of land sub-demised it for the purpose of its being used by the sublessee as a rubbish shoot, and he shot miscellaneous materials and stuff upon the land, thereby raising the surface about ten feet, it was held that there had been such an alteration of the thing demised as to constitute

(r) London v. Greyme, supra.

(s) Co. Litt. 53 b; Simmons v. Norton (1831), 7 Bing. at pp. 647—649.

(u) Queen's College v. Hallett (1811), 14 East, 489.

(x) See Barret v. Barret (1628), Hetley, 35; Doe v. E. of Burlington (1833), 5 B. & Ad. 507.

(y) Doe v. Bird (1826), 5 B. & C.

855; Doe v. E. of Burlington, supra.
(z) See Meux v. Cobley, [1892] 2
Ch. 253.

(a) Doherty v. Allman (1878), 3 App. Cas. 709. Cf. Re McIntosh and Pontypridd Improvements Co. (1891), 61 L. J. Q. B. 164.

(b) Jones v. Chappell (1875), 20 Eq. 539.

(c) Tucker v. Linger (1882), 21 Ch. D. 18, per Kay, J., p. 29.

(d) Meux v. Cobley, [1892] 2 Ch. 253. See this case as to the effect of the Agricultural Holdings Act, 1883, on the doctrine of waste.

(e) Grand Canal Co. v. M'Name, (1891) 29 L. R. Ir. 131.

⁽q) Cole v. Greene (1671), 1 Lev. 309; S. C. sub nom. Cole v. Forth, 1 Mod. 94; London v. Greyme (1608), Cro. Jac. 182.

⁽t) Co. Litt. 53 b. As to when land will be regarded as ancient pasture land, see Goring v. Goring (1676), 3 Swanst. 661; Murphy v. Daly (1860), 13 Ir. C. L. R. 239.

actionable waste, entitling the lessors, as against the original lessees and the sublessee, to damages and an injunction (f).

The Court will restrain a tenant from pulling down a house New buildand building another which the landlord dislikes, although it is alterations. an improvement (g), and will, in a proper case, enforce a covenant against alterations (h), or against the making of new buildings or erections (i). The latter covenant may be violated by the erection of a permanent trellis-work (k), or by fixing hoardings for advertisements to the demised premises (l). a covenant not to affix any signboard or other notice of business to the exterior walls of demised buildings has been held to be broken by attaching to the front wall of part of the premises a metal frame, containing the words "His Majesty's Theatre," surmounted by a crown, and picked out at night in electric But where a lease of a shop occupied by a jeweller and watchmaker contained a covenant by the lessee not to make "any alteration to the said premises," it was held by the Court of Appeal that some limitation must be put on the word "alteration," and that affixing a large clock to the outside of the front wall of the premises was not a breach of the covenant (n).

Every lessee of land is liable for all waste done on the land in lease, by whomsoever it may be committed, for it is presumed in law that the lessee may withstand it (o).

If a tenant at will commits voluntary waste, this operates as a Tenant at determination of the will, and trespass lies against him (p).

(2) PERMISSIVE WASTE.

Permissive waste consists in suffering houses to fall into decay through want of necessary repairs (q); but if a house was uncovered when the tenant came in, it is no waste in him to

- (f) West Ham Central Charity Board v. East London Waterworks Co., [1900] 1 Ch. 624. In this case (at p. 635) Buckley, J., referred to the definition of waste given in Lord Darcy v. Askwith ((1618), Hob. 234) as being the best definition which he had been able to find.
- (g) Smyth v. Carter (1853), 18 Beav. 78.
- (h) Perry v. **Davis** (1858), 3C. B. N. S. 769.
- (i) Haigh v. Waterman (1867), 16 L. T. 875.
 - (k) Wood v. Cooper, [1894] 3 Ch.

- 671.
- (l) Pocock v. Gilham (1883), C. & E. 104.
- (m) Attorney-General v. The Playhouse (1903), 19 T. L. R. 580.
- (n) Bickmore v. Dimmer, [1903] 1Ch. 158, 168.
- (o) 2 Wms. Saund. ed. 1871, p. 658, note (m). See Attersoll v. Stevens (1808), 1 Taunt. p. 196.
- (p) Countess of Shrewsbury's Case (1601), 5 Rep. 13 b.
- (q) See Herne v. Benbow (1813), 4 Taunt. 764.

Tenants at will or from

year to year

not liable.

Tenant for

years liable,

suffer it to fall down (r). It is not waste at common law, either wilful or permissive, to leave land uncultivated (s).

Tenants at will (t) and tenants from year to year (u) are not liable for permissive waste.

At common law no remedy for waste, either voluntary or permissive, lay against lessee for life or years (x), but by the Statute of Gloucester (y) a writ of waste was given against each class. Whether this included permissive waste has been the subject of controversy (z). At one time it was supposed that the liability for permissive waste had been established (a); but the doubt has been revived (b), and at present the illogical result appears to have been reached that tenants for years are liable (c), but not tenants for life (d).

but not tenants for life.

(3) Remedies for Waste.

The remedy for waste is by action to recover damages for the waste, or by injunction to prevent the commission of threatened waste, or the continuance or repetition of waste already committed.

In an action for waste the measure of damages is not necessarily the sum required to restore the property; it is the diminution in the value of the reversionary interest, less an allowance for discount for immediate payment (e). Although by the act of waste, as the opening of a new door, the house is not weakened or injured, the jury must still be asked whether there

Damages.

(r) Co. Litt. 53 a.

(s) Per Parke, B., in *Hutton* v. Warren (1836), 1 M. & W. at p. 472.

(t) Harnett v. Maitland (1847), 16 M. & W. 257; Countess of Shrewsbury's Case (1601), 5 Rep. 13 b; Panton v. Isham (1693), 3 Lev. 359 (no action for negligently keeping fire).

(u) Torriano v. Young (1833), 6 C. & P. 8. See Martin v. Gilham (1837), 7 A. & E. 540.

(x) Countess of Shrewsbury's Case, supra; Woodhouse v. Walker (1880), 5 Q. B. D. p. 406.

(y) 6 Ed. 1, c. 5 (repealed 42 & 43 Vict. c. 59); and see Stat. of Marlbridge, 52 Hen. 3, c. 23.

(z) See Jones v. Hill (1817), 7 Taunt. 392.

(a) Harnett v. Maitland (1847), 16 M. & W. 257; Yellowley v. Gower

(1865), 11 Ex. at p. 294; 2 Wms. Saund. ed. 1871, p. 646, note (c).

(b) Woodhouse v. Walker (1880), 5 Q. B. D. 404.

(c) Davies v. Davies (1888), 38 Ch. D. 499.

(d) Re Cartwright, Avis v. Newman (1889), 41 Ch. D. 532. See Powys v. Blagrave (1854), 4 D. M. & G. 448; Barnes v. Dowling (1881), 44 L. T. 809. As to the liability of the legatee for life of a leasehold house to pay the rent and perform the covenants, see Re Betty, [1899] 1 Ch. 821; Re Gjers, Cooper v. Gjers, [1899] 2 Ch. 54; and Re Waldron and Boque's Contract, [1904] 1 Ir. R. 240, 246. in which cases Re Tomlinson, [1898] 1 Ch. 232, was not followed.

(e) Whitham v. Kershaw (1885). 16 Q. B. D. 613. was any injury to the reversionary estate (f). If the jury give only nominal damages, judgment may, it seems, be entered for the defendant (g). The action lies either during or after the expiration of the term (h), and although the injury might be the subject of an action for breach of express covenant (i). And it lies against the tenant for acts done while he holds over after the expiration of notice to quit (k).

An injunction will be granted to restrain waste (l), provided Injunction. the acts of waste are prejudicial to the inheritance (m). And an injunction will be granted at the suit of a superior landlord against an underlessee (n). Damages can be given for waste completed at the date of the action, and an injunction against further waste (o).

SECT. IV.—MODE OF USING PREMISES.

					PAGE
(1) Where there is no express agreement .	•	•	•	•	. 353
Illegal purposes	•	•	•	•	. 353
Fitness of premises for use intended.	•	•	•	•	. 354
(2) Where there is an express agreement.	•	•	•	•	. 356
Construction of contracts—	•	•	•	•	. 357
Relating to exercise of trade generally	•	•	•	•	. 357
,, particular trades	•	•	•	•	. 358
,, use as public-house	•	•	•	•	. 360
,, matters causing nuisance or	ranno	yane	10	•	. 361
,, use as private residence .	•	٠.	•	•	. 362
,, forfeiture of public-house l	icence	8	•	•	. 363
,, "tied houses"	•	•	•	•	. 365
Enforcing covenants	•	•	•	•	. 366

(1) WHERE THERE IS NO EXPRESS AGREEMENT.

No legal demand can arise out of a contract based upon an Illegal purillegal or immoral consideration. Hence rent or damages for poses. breach of covenant are not recoverable under leases of houses used for purposes of prostitution; provided the lessor is aware

- (f) Young \forall . Spencer (1829), 10 B. & C. 145.
- (g) Harrow School v. Alderton (1800), 2 B. & P. 86, an action on the Stat. of Gloucester.
- (h) Kinlyside ∇ . Thornton (1776), 2 W. Bl. 1111.
- (i) Kinlyside v. Thornton, supra; Marker v. Kenrick (1853), 13 C. B.
- (k) Burchell v. Hornsby (1808), 1 Camp. 360.

L.T.

(l) Kimpton v. Eve (1813), 2

- Ves. & B. 349. See Mayor of London v. Hedger (1811), 18 Ves. 355; and for a case of wilful injury, Pratt v. Brett (1817), 2 Madd. 62.
- (m) Meux v. Cobley, [1892] 2 Ch. 253; supra, p. 350.
- (n) Farrant v. Lovel (1750), 3 Atk. 723.
- (o) Hindley v. Emery (1865), L. R. 1 Eq. 52. As to damages in lieu of an injunction, see Annual Practice, notes to R. S. C. Ord. 50, r. 6; and Kerr on Injunctions, 4th ed.

that the premises are to be so used (p). And although the house is not originally let for this purpose, rent is not recoverable if the lessor with full knowledge suffers the tenancy to go on after he has had the opportunity of terminating it (q). Similarly if the premises are used for the purpose of boiling oil or tar contrary to 25 Geo. 3, c. 77 (r).

As every right or obligation arising out of the contract is tainted by the immorality of the transaction, the lessee cannot recover from his assignee, under a covenant in the assignment for indemnity in respect of all the lessee's covenants, a sum which the lessor has compelled the lessee to pay for dilapidations (s).

In an action for breach of a contract to let premises, the defendant may justify such breach by proving that the plaintiff intended to use the premises for an illegal purpose, although at the time of refusing to perform the contract he did not assign such intended use as a reason for his refusal (t). After the lesser has entered into possession under a lease, however, the lesser cannot avoid such lease, on the ground that it was obtained by the fraudulent misrepresentations of the lessee as to matters collateral to the lease; as, for instance, that he intended to use the demised premises for a respectable business, whereas he used them for an immoral purpose (u).

Where premises are let with a right of access by a way over which the lessor has control, and the lessor suspects that the lessee is intending to use them for an unlawful purpose, he should apply for an injunction and not take the law into his own hands by interfering with the right of access (x).

There is no contract implied by law on the part of the lessor of an unfurnished house, that it is in a reasonably fit state for occupation, although it is let for the purpose of immediate habitation (y). The owner of a house is not bound to disclose to

Fitness of premises for use intended.

1. On demise of unfurnished house.

(p) Girardy v. Richardson (1793), 1 Esp. 13; Crisp v. Churchill (1794), cited in Lloyd v. Johnson, 1 B. & P. 340; Appleton v. Campbell (1826), 2 C. & P. 347. And so generally where the agreement under which the rent is due is illegal: Gibbons v. Chambers (1885), C. & E. 577.

(q) Jennings v. Throgmorton (1825), Ry. & M. 251, a case of a weekly tenancy.

(r) Smith v. White (1866), L. R. 1 Eq. 626.

(8) Gas Light, &c., Co. v. Turner (1840), 6 Bing. N. C. 324. See Flight v. Clarke (1844), 13 M. & W. 155.

(t) Cowan v. Milbourn (1867), L. R. 2 Ex. 230.

(u) Feret v. Hill (1854), 15 C.B. 207. (x) Lilley v. Bennett (1888), 5 T. L. R. 156.

(y) Hart v. Windsor (1843), 12 M. & W. 68. But under sect. 12 of the Housing of the Working Classes Act, 1885 (48 & 49 Vict. c. 72), upon the letting for habitation by persons

an intending lessee that it is in a ruinous state and dangerous to occupy, unless he knows that the intending lessee is influenced by his belief of the soundness of the house in agreeing to take it (z). In the absence of express warranty or active deceit, no action will lie against the owner for not making this disclosure (z). It has been said, however, that the contract cannot be enforced if the house is dangerous through disease or drainage, or uninhabitable through vermin (a).

In a recent case (b), a lessee had executed a counterpart of Representathe lease, but declined to part with it unless he received an drains. assurance from the lessor that the drains—to which there was no reference in the lease—were in good order. Thereupon the lessor verbally represented that the drains were in good order, and, on that, the counterpart was handed to him. Afterwards it turned out that the drains were not in good order. It was held by the Court of Appeal that the lessor's representation was a warranty, collateral to and not contradictory of the lease, for breach of which the lessee was entitled to maintain an action for damages. "To create a warranty," said A. L. Smith, M.R. (c), "no special form of words is necessary. It must be a collateral undertaking, forming part of the contract by agreement of the parties express or implied, and must be given during the course of the dealing which leads to the bargain, and should then enter into the bargain as part of it." Where a statement as to the sanitary condition of an unfurnished house, made in connection with a verbal contract for the letting of the house, amounted to a warranty, and was not true, it was held by the Court of Appeal that the tenant, having left the house within a reasonable time, was not liable on the contract (d).

of the working classes a house or part of a house, there is an implied condition that the house is at the commencement of the holding in all respects reasonably fit for human habitation.

(z) Krates v. Cadogan (1851), 10 C. B. 591. Consider Caldwell v. McCallum (1902), 4 F. 371, where, the landlord's agent having assured the tenant, on his taking a house, that a ceiling was secure, the landlord was held liable for damage caused by the fall of the ceiling.

(a) Per Bacon, V.-C., in Powell v. Chester (1885), 52 L. T. 722.

(b) De Lassalle v. Guildford, [1901] 2 K. B. 215. See the observations in the judgment of the C. A., discussing Kennard v. Ashman (1894), 10 T. L. R. 213; Green v. Symons (1897), 13 ib. 301; and doubting Longman v. Blount (1896), 12 T. L. R. 520.

(c) At p. 221. As to statements made fraudulently or recklessly, see Derry v. Peek (1889), 14 App. Cas. 337; and cf. Saunders v. Pawley (1886), 2 T. L. R. 590; Burtram v. Aldous, ib. 237; Butler v. Goundry (1888), 4 T. L. R. 711.

(d) Bunn v. Harrison (1886), 3 T. L. R. 146.

2. On demise of furnished house.

It has been held, that upon the demise of a furnished house, since the bargain is not so much for the house as the furniture, there is an implied condition that it shall be reasonably fit for immediate habitation (e). It is a breach of this condition, whether express or implied, if the house, or any of the rooms, are infested and overrun with vermin; but to justify the tenant in quitting without notice, it must appear that the nuisance existed to a serious and substantial extent, and was such as he could not reasonably be expected either to endure or to extirpate (f).

The implied condition as to the fitness of a furnished house for occupation applies only to the condition of the premises at the commencement of the tenancy (g); and it is not enough that the landlord should honestly believe it to be in a fit state. It must in fact be reasonably habitable (h). If it is not so, the lessee may within a reasonable time rescind the contract (i).

Pictures.

According to a recent Scottish case, the tenant of a furnished house is entitled, where there is no stipulation to the contrary, to remove the pictures from the walls and store them, during the tenancy, in one of the rooms, notwithstanding any objection on the landlord's part(k).

3. On demise of land.

** 1

On a demise of land, or the vesture of land, there is no implied obligation on the part of the lessor that it shall be fit for the purpose for which it is taken (l). Nor in a lease of land for agricultural purposes is there an implied warranty by the lessor that no noxious plants are growing on it (m).

(2) WHERE THERE IS AN EXPRESS AGREEMENT.

Premises can in general be used for purposes other than those originally contemplated, provided a specific covenant is not

(e) Smith v. Marrable (1843), 11 M. & W. 5; Wilson v. Finch Hatton (1877), 2 Ex. D. 336. See Sutton v. Temple (1843), 12 M. & W. p. 65; Hart v. Windsor, 12 M. & W. p. 87; Harrison v. Malet (1886), 3 T. L. R. 58; Bird v. Lord Greville (1884), C. & E. 317. In Powell v. Chester (1885), 52 L. T. 722, Bacon, V.-C., considered Smith v. Marrable, supra, to be an authority only as to taking furnished apartments at the seaside, or for temporary occupation; but that view is conceived to be erroneous.

(f) Campbell v. Wenlock (1866), 4

F. & F. 716.

(y) Sarson v. Roberts, [1895] ² Q. B. 395; Maclean v. Currie (1884), C. & E. 361. See Wilson v. Finch Hatton, supra; Dawson v. Clementson (1885), 1 T. L. R. 295.

(h) Charsley v. Jones (1889), 53

J. P. 280.

- (i) Wilson v. Fingh Hatton, supra.
 (k) Miller v. Stewart (1900), 2 F.
 309.
- (1) Sutton v. Temple (1843), 12 M. & W. 52.

(m) Erskine v. Adeane (1873), L. R. 8 Ch. 756.

broken (n), and provided there is no fraud on the lessor (o). If, however, land is let for a specified purpose only, an injunction will be granted to restrain its use for other purposes (p).

Contracts whereby a person is restricted generally, and with- Construction out reference to place, from exercising his trade, although for a limited time, were formerly held to be void(q). Covenants restraining a lessee or lessor from carrying on a specific trade within a particular area were valid, provided they were reasonable, having regard to the subject-matter of the contract (r). But it is now settled that a contract in restraint of trade is not necessarily void because unlimited in point of space, and the test of the validity of the restriction is whether it is reasonably required for the protection of the covenantee, and is not injurious to public interests (s).

of contracts relating to exercise of trades.

It is further to be noticed that a restrictive covenant as to the letting or user of property will be construed by the Court struction of strictly, and so as not to create a wider obligation than is covenants. imported by the actual words of the covenant (t).

Strict con-

The following cases illustrate the construction of some covenants restrictive of the user of property:—

COVENANT not to exercise any trade or business. The word Covenants "trade" is applicable only to a business conducted by buying and selling, and does not extend to the keeping of generally. a private lunatic asylum (u). The occupation of a schoolmaster is a business within the meaning of this covenant (x). Payment, however, is not necessary to constitute a business; nor does it necessarily make a business (y). charitable institution called a "Home for Working Girls,"

against

(n) Grand Canal Co. v. M'Namee (1891), 29 L. R. Ir. 131.

(0) Bennett v. Sadler (1808), 14 Ves. **256.**

(p) Kehoe v. M. of Lansdowne, [1893] A. C. 451, 458. As to the intended use becoming impossible owing to a change in the law, see Doe v. Rugeley (1844), 6 Q. B. 107.

(q) Ward v. Byrne (1839), 5 M. & W. 548; Hinde v. Gray (1840), 1

M. & Gr. 195, 203.

(r) Mitchell v. Reynolds (1711), 1 P. Wms. 181; Hitchcock v. Coker (1837), 6 A. & E. 438. See per Tindal, C.J., in Horner v. Graves (1831), 7 Bing. at p. 743.

(s) Nordenfelt v. Maxim-Nordenfelt

Co., [1894] A. C. 535. See Leather Cloth Co. v. Lorsont (1869), L. R. 9 Eq. p. 354; Rousillon v. Rousillon (1880), 14 Ch. D. 351; Davies v. Davies (1887), 36 Ch. D. 359.

(t) Brigg v. Thornton, [1904] 1 Ch. 386, following on this point Kemp v. Bird (1877), 5 Ch. D. 974, 976.

(u) Doe v. Bird (1834), 2 A. & E. 161.

(x) Doe v. Keeling (1813), 1 M. & S. 95, 99; Kemp v. Sober (1851), 1 Sim. N. S. 517; Wickenden v. Webster (1856), 6 E. & B. 387; Johnstone v. Hall (1856), 2 K. & J. 414; Wauton v. Coppard, [1899] 1 Ch. 92.

(y) Rolls v. Miller (1884), 27 Ch. D. 71.

where the inmates were provided without payment with board and lodging, was held to be a business—that is, practically, the business of a lodging-house (z); and the user of premises as a throat and chest hospital for poor persons, who make small payments according to their means, is a business (a).

The covenantee does not waive the benefit of the covenant by permitting another house held under the like covenant to be used as a school (b). Under a covenant not to use premises for certain purposes, there is a new breach every day during the time the premises are so used (c).

COVENANT not to affix or permit any outward mark or show of business to be affixed on the demised premises. It is a breach to place on wire blinds and on a brass plate the name of a firm carrying on business on the premises (d).

COVENANT in a lease of a house against the user of the house for any art, trade, or business. Teaching music is a breach (e).

COVENANT not to use a house as a coffee-house. Lessees who are dealers in tea, coffee, and other groceries cannot sell light refreshments, such as tea, coffee, and sandwiches, for the convenience of customers (g).

COVENANT not to carry on the business of a wholesale and retail confectioner. It is no breach for a grocer and tea-dealer to sell a particular kind of sweetmeat in which a confectioner may deal (h). And, generally, where a particular trade is prohibited, the sale by a different class of trader of certain articles which form an essential part, but not nearly the whole, of the prohibited trade, is no breach (i).

Particular trades (f).

(z) Rolls v. Miller (1884), 27 Ch. D. 71.

(a) Bramwell v. Lacey (1879), 10 Ch. D. 691; or providing medical requisites, though not for profit: Portman v. Home Hospital Association (1884), 27 Ch. D. 81 (note).

(b) Kemp v. Sober (1851), 1 Sim. N. S. 517.

(c) Judgment in Doe v. Woodbridge (1829), 9 B. & C. at p. 378.

(d) Evans v. Davis (1878), 10 Ch. D. 747.

(e) Tritton v. Bankart (1887), 56 L. T. 306.

(f) As to effect of permission to

carry on a particular trade, see Macher v. Foundling Hospital (1813), 1 V. & B. 188; as to covenant to use an opera-house only for theatrical purposes, and that the lessee will use his best endeavours to improve the house, see Croft v. Lumley (1857), 6 H. L. C. 672.

(y) Fitz v. Iles, [1893] 1 Ch. 77; commented upon in Ashby v. Wilson, [1900] 1 Ch. 66, and in Holloway Brothers v. Hill, [1902] 2 Ch. 612.

(h) Lumley v. Metrop. Ry. Co. (1876), 34 L. T. 774.

(i) Stuart v. Diplock (1889), 43 C. D. 343.

- COVENANT not to exercise the trade of a butcher. Is broken by selling raw meat by retail upon the premises, although no beasts are slaughtered there (k).
- COVENANT by the Postmaster-General to use premises as a post office for the district and not for any other purpose. It is no breach for excise duties to be received and licences granted on the premises (l).
- COVENANT not to carry on a business similar to the specified business of another tenant of the same lessor. is whether the businesses are sufficiently alike to compete (m).

Where a particular trade is prohibited, the partial exercise of the trade on the demised premises will operate as a breach of a covenant not to carry on such trade (n).

Sometimes in a lease there is, besides a covenant by the Covenants lessee restrictive of his user of the demised property, a covenant the lessor. by the lessor restrictive of the user of neighbouring property belonging to him. In such cases, if the lessor's covenant is as a prudent lessee should take care that it is—to the effect that the lessor will not use or let any of his neighbouring property, or permit the same to be used (o), for any business competitive with the lessee's business, the lessor may hope to be able to prevent the carrying on of such a competitive business, on such neighbouring property, either by the lessor or by any subsequent lessee from him. But if the lessor merely covenants that he will not let his neighbouring property for any competitive business, the lessee may find himself without remedy, in the event of a subsequent lessee from the same landlord setting up such a business without any fault on the landlord's part (p).

The following are instances of covenants against the use of

(1) Wadhum v. Postmaster-General (1871), L. R. 6 Q. B. 644.

976, 977; Fitz v. Iles, [1893] 1 Ch. at p. 81.

⁽k) Doe v. Spry (1818), 1 B. & A. 617. See Doc v. Elsam (1828), M. & M. 189.

⁽m) $Drew \ \nabla \cdot Guy$, [1894] 3 Ch. 25. (n) Doe v. Spry (1818), 1 B. & A. 617, 619. See Doe v. Elsum, supra.

⁽o) See Per Byrne, J., in Holloway Brothers v. Hill, [1902] 2 Ch. 612, at pp. 618, 619; per James, L.J., in Kemp v. Bird (1877), 5 Ch. D. at pp.

⁽p) See Ashby v. Wilson, [1900] 1 Ch. 66; also Brigg v. Thornton, [1904] 1 Ch. 386, in which case the landlord of a shop had only agreed not to let any of his other neighbouring shops for a competitive business, and the tenant was held to have no remedy against a subsequent tenant of one of those other shops, who was using it competitively.

property as a public-house or the like, or so as to be a nuisance, &c., or otherwise than as a private residence:— :

Use of premises as public-house, &c.

- COVENANT not to use any building to be erected on the demised premises as a "public-house, tavern, or beershop." Is broken by the tenant obtaining an off-licence authorizing him to sell at a shop on the demised land beer not to be drunk on the premises, and selling beer accordingly (q).
- COVENANT not to use a house as a "beerhouse" (r) or as a public-house for the sale of beer, &c. Is not broken by the tenant's taking out an excise licence for the sale of beer not to be drunk on the premises (s).
- COVENANT, in deed executed in 1854, not to carry on the trade or calling of hotel or tavern keeper, publican or beershop keeper, or seller by retail of wine, beer, spirits or spirituous liquors. Is not broken by a grocer's selling, across the counter, wine and spirits by retail, in bottles only, such wine and spirits not to be consumed on the premises, under a licence granted under 24 & 25 Vict. c. 21, s. 2 (t).
- COVENANT not to carry on the "trade of an innkeeper, victualler, or retailer of wine, spirits, or beer." Is broken by the sale of these liquors at counters in the building, although only for the use of persons who pay for admission to a theatre adjoining (u).
- COVENANT against the use of a house as a "public-house or beer-shop." An injunction will not be granted to restrain its use as a private hotel where wines and spirits are supplied only to visitors, and no beer at all is sold on the premises (x).

(q) London and Suburban Land, &c., Co. v. Field (1881), 16 Ch. D. 645; Nicoll v. Fenning (1881), 19 Ch. D. 258; B. of St. Albans v. Battersby (1878), 3 Q. B. D. 359.

(r) London and N. W. Ry. Co. v. Gurnett (1869), L. R. 9 Eq. 26; Holt & Co. v. Collyer (1881), 16 Ch. D. 718. Cf. Formby v. Baker, [1903] 2 Ch. 539, at pp. 548, 549 (covenant not to erect "any beerhouse or shop or any hotel of less annual value than 50l."); and Re Cullen and Rial's Contract, [1904] 1 Ir. R. 206 (covenant not to use or follow the trade of a publican

—not broken by trading as a licensed

spirit grocer).

(s) Pease v. Coates (1866), L. R. 2 Eq. 688. As to sale to members of a club, see Ranken v. Hunt (1894), 10 R. 249.

(t) Jones v. Bone (1870), L. R. 9 Eq. 674. But in Fielden v. Slater (1869), L. R. 7 Eq. 523, a similar covenant was held to prohibit the sale of spirituous liquors in bottles.

(u) Buckle v. Fredericks (1890), 44

Ch. D. 244.

(x) D. of Devonshire v. Simmens (1894), 11 T. L. R. 52.

COVENANT not to carry on the business of a common brewer or retailer of beer. Carrying on the business of a retail brewer is not a breach (y).

Covenant not to carry on any noisome or offensive trade. Nuisance, &c Carrying on a dangerous trade is not a breach of this covenant (z). In construing the covenant, it is particularly worthy of consideration, whether the trade complained of was carried on upon the premises at the time of the demise (a), and apparently a trade carried on there at such time would not be prohibited (a). Lime-burning is a noisome business (b). The carrying on of a fried fish business may be a breach of a covenant against offensive trade (c), and so, possibly, may be the carrying on of a mock auction (d).

Covenant against causing a nuisance to the vendor of property or adjoining (e) occupiers. It has been held that the nuisance must be a legal nuisance in the technical sense (f), but this has been doubted (g), and that the covenant is not broken by the establishment of a national school (f).

COVENANT, in a building lease, against any act which shall or may be or grow to the annoyance (h), nuisance, grievance or damage of the lessor or the inhabitants of the adjoining houses. Is broken by the establishment of a hospital for the treatment of out-door patients suffering from diseases

(y) Simons v. Farren (1834), 1 Bing. N. C. 126. As to "vintner," see Wells v. Attenborough (1871), 24 L. T. 312, and as to sale of wine, see 23 & 24 Vict. c. 27, s. 44.

(z) Hickman v. Isaacs (1861), 4

L. T. N. S. 285.

(a) Gutteridge v. Munyard (1834), 7 C. & P. 129.

(b) Wiltshire v. Cosslett (1889), 5 T. L. R. 410.

(c) D. of Devonshire v. Brookshaw (1899), 43 Sol. Journ. 675.

(d) Moses v. Taylor (1862), 11 W. R. 81.

(e) As to the meaning of "adjoining" in a covenant by the lessor against a certain trade on adjoining premises, see Vale & Sons v. Moorgate St., &c., Buildings (1899), 80 L.T. 487. In White v. Harrow (1902), 86 L.T. 4,

the words "adjoining premises" in a lessee's covenant were construed by the C. A. to mean premises in physical contact with the lessee's house.

(f) Harrison v. Good (1871), L. R. 11 Eq. 338 (Bacon, V.-C.). See the definition of such a nuisance in Walter v. Selfe (1841), 4 De G. & Sm. p. 322. But a boys' school is within a covenant against any trade or business or occupation whereby any injurious, offensive or disagreeable noise or nuisance shall be occasioned: Wauton v. Coppard, [1899] 1 Ch. 92. Cf. Gresham, &c., Society v. Ranger (1899), 15 T. L. R. 454.

(y) See the judgments of the C. A. in Tod-Heutly v. Benham (1888), 40

Ch. D. 80.

(h) See Macher v. Foundling Hospital (1813), 1 V. & B. 188. of the throat, &c. (i); or by a demised house being used for immoral purposes (k). Anything which disturbs the reasonable peace of mind of an adjoining occupier is an annoyance, though it may not amount to physical detriment to comfort (l). The covenant is broken by annoyance to inhabitants of adjoining houses, although not on the lessor's property (m).

Covenant not to do any act, &c., upon the demised premises which may lead to the damage, annoyance or disturbance of the lessor, or any of his tenants, or any part of the neighbourhood; followed by proviso for re-entry upon the carrying on of certain specified trades (not including that of a licensed victualler), "or any other trade or business that may be, or grow, or lead to be offensive, or any annoyance or disturbance" to any of the lessor's tenants. The opening of a public-house upon the premises is not a breach of the covenant or proviso (n). Nor in a business neighbourhood is such a covenant broken by putting up a prominent advertisement (o). But it is broken by the erection of a permanent trellis-work which interferes with the light to, and the pleasurable enjoyment of, adjoining premises (p).

COVENANT against the use of premises so as to be a nuisance or otherwise than as a private club. Is broken by boxing entertainments to which friends of the members are admitted by ticket (q).

Covenant that no building to be erected on certain land shall be used or occupied otherwise than as a private residence only, and not for any purpose of trade. The first part of the covenant is broken by the erection of a building for the education and lodging of one hundred girls in connection

Private residence, &c. (r).

- (i) Tod-Heatly v. Benham (1888), 40 Ch. D. 80; Bramwell v. Lacy (1879), 10 Ch. D. 691. A private hospital may fall within a covenant against carrying on an "offensive" business: E. of Pembroke v. Warren, [1896] 1 Ir. R. 76, 104.
- (k) Lord Howard de Wulden v. Barber (1903), 19 T. L. R. 183.
- (l) Per Bowen, L.J., in Tod-Heatly v. Benham, loc. cit. p. 98.
- (m) See the judgments of the C. A. in Tod-Heatly v. Benham (1888), 40

- Ch. D. 80.
- (n) Jones v. Thorne (1823), 1 B. & C. 715.
- (o) Our Boys' Clothing Co. v. Holborn, &c., Co. (1896), 12 T. L. B. 344.
- (p) Wood v. Cooper, [1894] 3 Ch. 671.
- (q) Seaward v. Paterson (1896), 12 T. L. R. 525. As to covenant against games of chance, see Fairtlough v. Whitmore (1895), 11 T. L. R. 288.
- (r) See Bray v. Fogarty (1870), I. R. 4 Eq. 544.

with a charitable institution for the daughters of missionaries (s), or by the use of a house as a boarding-house where pupils attending a school in the neighbourhood may be taken in as paying boarders (t).

COVENANT to use house as a private dwelling-house only. seems that conversion into a shop may be effected by user, without any structural alterations of the house (u). It is a breach to use the house as an office for receiving orders for coals, the words "Coal office" being exhibited in front (u), but an auction of furniture belonging to the house is no breach (x).

COVENANT that no more than one messuage or dwelling-house shall be erected or be standing on a particular plot, and that such messuage shall be adapted for and used as and for a private residence only. The erection of a large block of buildings, to be occupied as residential flats, with a public entrance and staircase, involves a breach of both branches of the covenant (y).

Leases of public-houses usually contain special covenants and Public-house provisions relative to the user of the demised premises, the preservation of the licences attached to them, and the supply of excisable liquors to the tenant. Nowadays a very great number of public-houses are owned by brewery companies and firms, who seek, in letting them, to "tie" the houses as closely as they can to themselves. The following are instances of covenants, in such leases, connected with the licences:-

Covenant by the lessee (z) not to do, omit, or permit, or suffer Licences. to be done or omitted, any act, matter or thing whatsoever that can or may affect, lessen or make void any of the licences for the time being granted to the public-house. The lessee is convicted of offences against the Licensing Acts, but under sect. 13 of the Licensing Act, 1874, the convictions are not recorded on the licences. The licences

(s) German v. Chapman (1877), 7 Ch. D. 271.

⁽t) Hobson v. Tulloch, [1898] 1 Ch. 424.

⁽u) Wilkinson v. Rogers (1863), 2 D. J. & S. 62. See 12 W. R. 119.

⁽x) Reeves \mathbf{v} . Cattell (1876), 24 W. R. 485. As to covenant not to "permit" sale by auction, see Toleman v. Portbury (1870), L. R. 5 Q. B.

^{288; 7} Q. B. 344; and as to covenant against the erection of a dwellinghouse, see Domvile v. Colville (1873), I. R. 7 C. L. 68.

⁽y) Rogers v. Hosegood, [1900] 2 Ch. 388.

⁽z) On a letting by parol there is no implied agreement against forfeiture of licence: Maw v. Hindmarsh (1873), 28 L. T. 644.

are not "affected," and there is no breach (a). Otherwise if the words are "whereby the licences necessary for using the premises as a public-house may be forfeited or the renewal thereof withheld," and convictions are indersed (b). Where the lessee or his assign underlets, it is no breach on their part of such a covenant if the underlessee does something whereby the licence is forfeited (c); unless the forfeiture is really due to the default of the lessee, as where he lets the premises in a state unsuitable for carrying on the business of a public-house property (d).

COVENANT by the lessee to use his best endeavours to keep the. house open as a public-house. If the licence is taken away, the lessee commits a breach of the covenant if he makes no attempt, by asking for a rehearing or otherwise, to get the house open again (e).

"Suffer to be done."

Again, where the lease of a public-house contained a covenant by the lessee for himself and his assigns not to do "or suffer to be done" on the premises, any act whereby the licence might be forfeited, and a sublessee, whose sublease contained a covenant to the same effect, committed a breach of it, it was held that the sublessor had not "suffered" the act to be done, and was not liable to the headlessor. A sublessee is not the servant or agent of his sublessor. Moreover, the word "assigns" has a definite legal meaning, and does not ordinarily include underlessees (f).

- (a) Wooler v. Knott (1876), 1 Ex. D. 265. See Fleetwood v. Hull (1889), 23 Q. B. D. 35; Moore v. Robinson (1878), 48 L. J. Q. B. 156.
- (b) Harmann v. Powell (1891), 60 L. J. Q. B. 628.
- (c) Bryant v. Hancock & Co., [1898] 1 Q. B. 716; affd., [1899] A. C. 442.
- (d) Bodkin v. Barker (1897), Times, 14 Dec.
- (e) Linder v. Pryor (1838), 8 C. & P. 518. Consider Hooper v. Brodrick (1840), 11 Sim. 47. As to the construction of a covenant to use premises as a public-house or beerhouse only, see Wilson v. Twamley, infra, at p. 106; and as to the construction of covenants relating to licences, Bryant v. Hancock & Co., supra, and Brown v. Watson, [1904] 2 Ir. R. 219, C. A., where a tenant's covenant to preserve a licence was held not to have been broken by his

executrix. See, too, Charrington & Co. v. Camp, [1902] 1 Ch. 386. In that case there was a tenancy-agreement under which the tenant of a public-house was not to do anything whereby the licences might be jeopardised. The tenant closed the house and went away. In an action by the landlords for recovery of possession, the Court, on interlocutory motion, appointed a receiver of the licences, and gave the receiver possession of the premises for the purpose of preserving them as a licensed property. As to compensation for non-renewal of licences, see the Licensing Act, 1904.

(f) Wilson v. Twamley, [1904] 2 K. B. 99, 106. Whether Mumford v. Walker (1901), 71 L. J. K. B. 19, in which case the lessee was held liable (on the ground that his covenant was an absolute one) for his tenant, was

correctly decided, quære.

Notwithstanding that agreements intended to compel the "Tied house" lessees of public-houses to purchase beer of the lessors have been held to be injurious to the public welfare (g), their validity is well established (h); but there is an implied obligation on the landlord to supply the tenant with such kinds of beer as he requires, and if it is not fulfilled the tenant may go elsewhere (i). And it is conceived to be incumbent on a plaintiff suing for breaches of a covenant of this nature to show that the beer delivered by him was good marketable beer (k).

Where the tenant covenants, in a lease of a tied house, to buy from the landlords all beer which they shall be willing to supply at "the fair current market price," the expression quoted is not equivalent to "the lowest price at which the tenant could buy," but means a price which is current and fair in the case of tied houses, and not in excess of the general market rate (l).

Where the covenant is accompanied by a proviso for re-entry on non-performance, and for reduction of rent so long as it is performed, the covenant is absolute, and the lessee has not the alternative of dealing with a rival brewer on paying the unreduced rent (m).

If the covenant is to take beer from the lessors or their Right of successors in trade, and the successors remove the brewery plant a distance of two miles and there brew, the trade is determined, and they cannot take advantage of the covenant (n); but it is covenants. otherwise if the covenant is to take beer from the lessors or their assigns generally: in such a case, upon a sale of the reversion to a different firm of brewers, the purchasers will take the benefit of the covenant (o). Where the covenant binds the lessee to take beer only from the lessor or his successors in business, and the lessor sells the reversion and at the same time continues to carry

lessor's

assigns to

benefit of

⁽y) Cooper v. Twibill (1812), 3 Camp. 286, note (a). See Doe v. Reid (1830), 10 B. & C. 849; Thornton v. Sherratt (1818), 8 Taunt. 529.

⁽h) As to purchase through an agent, see Edwick v. Hawkes (1881), 18 Ch. D. 199.

⁽i) Semble, Edwick v. Hawkes (1881), 18 Ch. D. 199. See Stancliffe v. Clarke (1852), 7 Ex. 439.

⁽k) Thornton v. Sherratt (1818), 8 Taunt. 529, 530; Holcombe v. Hewson (1810), 2 Camp. 391. See Weaver v. Sessions (1818), 6 Taunt. 154.

⁽l) Arnold, Perrett & Co. v. Radford, (1901), 17 T. L. R. 301, 302.

⁽m) Hanbury v. Cundy (1887), 58 L. T. 155.

⁽n) Doe v. Reid (1830), 10 B. & C. 849.

⁽o) Clegg v. Hands (1890), 44 Ch. D. 503. The question is generally one of construction. See per Farwell, J. in Manchester Brewery Co. v. Coombs, [1901] 2 Ch. 608, at p. 613, where Doe v. Reid, supra, is observed upon.

on his business, it has been held (p) that the benefit of the covenant does not go to the purchaser of the reversion. In comparing the three cases just referred to, it should be noticed that in Doe v. Reid the covenant was with the lessors, "their executors, administrators or assigns, or their successors in their late or present trade of brewers," and it was assumed that the word "assigns" was to be limited by the words which followed, so as to mean assigns who were successors in business. In Clegg v. Hands the term "lessors" was extended by the definition clause to mean "assigns," and there was no limitation to successors in business. In Birmingham Breweries, Limited v. Jameson the covenant was with the lessor and his firm and their successors in business, and there was a definition clause extending "lessor" to "assigns"; but it was held that the definition clause did not apply to the covenant, and hence the case was analogous to Doe v. Reid.

Agreements for taking supplies.

Where a lessor agrees to supply to the lessee the whole of the chlorine still-waste as it comes from his still, at a given rate, and not to use, or injure, or part with any of the still-waste except to the lessee, the lessee is bound to take the whole of the waste which, during his tenancy, comes from the still (q).

Where, in a lease of lime works, it was stipulated that the lessor should furnish, and the lessee should take, a certain quantity of coal from specified collieries, and the full quantity was not raised by the lessor from those collieries, it was held that the lessee could go elsewhere only for the deficiency, and not for the whole quantity of coal (r).

Presumption of licence.

Where certain acts are prohibited if done without the consent in writing of the lessor, and the lessor has for twenty years received the rent with full knowledge that a prohibited act—the converting of a dwelling-house into a public-house and grocery shop—has been done, the existence of a written licence may be presumed (s).

Enforcing covenant.

Where a lessor entitled in possession to receive the rents sues for breach of a covenant relating to the user of the demised premises, it is not necessary for him to show actual damage or

⁽p) By the Court of Appeal in Birmingham Breweries, Limited v. Jameson, [1898] 67 L. J. Ch. 403.

⁽q) Bealey v. Stuart (1862), 7 H. & N. 753.

⁽r) Wight v. Dicksons (1813), 1

Dow, 141.

⁽s) Gibson v. Doeg (1857), 2 H. & N. 615. Cf. Harman v. Ainslie. [1903] 2 K. B. at p. 244 (operation of a consent given to a particular tenant as a licence to a subsequent assignee).

pecuniary loss. But a remainderman must show actual damage to entitle him to relief by injunction (t).

An injunction will be granted to restrain a clear breach of an Injunction. express covenant, although the lessor is also secured by a power of forfeiture and of exacting a penalty (u); and if a lessee of a shop or other building, who has covenanted not to alter the demised premises, deliberately, after notice of objection, commits a breach of the covenant, and there has been no laches on the part of the covenantee, even a mandatory injunction will, it is conceived, be granted (x).

A lessee who has not covenanted against underletting, and who cannot interfere with the underlessee, is not liable to an injunction if a breach of covenant is committed by the underlessee (y).

The lessee of a person bound by a restrictive covenant may generally be sued for breach of it, whether assigns are mentioned in the covenant or not (z).

Mere passive acquiescence does not bar the right to enforce a Acquiescence. covenant; but otherwise where the covenantee has held out an inducement for infringement (a). But in the case of restrictive covenants affecting a building estate the right to enforce them may be lost by delay or acquiescence, or by a change in the character of the estate (b).

SECT. V.—CULTIVATION OF LAND.

		PAGE
(1) Where there is no express agreement	•	367
Obligation of tenant as to husbandlike cultivation.		367
" ,, expenditure of produce on premises		368
Custom		369
(2) Where there is an express agreement		370
Construction of covenants relating to mode of cultivation .		370
,, ,, hay and straw, &c	•	371
manure		371
Provisions in case of execution, &c.	_	373

(1) Where there is no Express Agreement.

Every tenant of a farm is bound to cultivate the farm in a Obligation of husbandlike manner according to the custom of the country, and

tenant as to husbandlike cultivation.

(t) Johnstone v. Hall (1856), 2 K. & J. 414.

(u) Barret v. Blagrave (1800), 5 Ves. 555. As to injunction against the lessor, see Altman v. Royal Aquarium Society (1876), 3 C. D. 228. (x) Bickmore v. Dimmer, [1903] 1 Ch. at p. 168.

(y) Moses v. Taylor (1862), 11

W. R. 81. See Tritton v. Bankart, supra, p. 358.

(z) Holloway Brothers v. Hill, [1902] 2 Ch. at p. 617.

(a) L. C. & D. Ry. Co. v. Bull (1882), 47 L. T. 413. Cf. Bray v. Fogarty (1870), I. R. 4 Eq. 544; De Bussche v. Alt (1878), 8 Ch. D. 286.

(b) Knight v. Simmonds, [1896] 2

to consume the produce (c) upon it. This is an engagement which arises out of the letting, and which the tenant cannot dispense with unless by special agreement (d). What is to be considered as a good and husbandlike mode of cultivation must vary exceedingly according to soil, climate, and situation; therefore the "custom of the country," with reference to good husbandry, must be applied to the approved habits of husbandry in the neighbourhood under circumstances of a like nature. Evidence that an estate had been managed according to the custom of the country would be always a medium of proof that it had been treated in a good and husbandlike manner (e). In an action against a tenant for treating the demised farm contrary to good husbandry and the custom of the country, it is not incumbent on the landlord to prove a definite known custom or course of husbandry; it is sufficient to show what is the prevalent course of good management; and by proving that the estate was not so managed, the landlord will prove that it was treated contrary to good husbandry and the custom of the country (f). The fact that a tenant has half his farm under tillage at the same time, while no other farmer in the neighbourhood tills more than a third, is clear proof of mismanagement contrary to the custom of the country in good husbandry (g). Out of the bare relation of landlord and tenant, no obligation arises to make a certain quantity of fallow, and to spread a certain quantity of manure every year thereon (h).

As to expenditure of produce on premises.

The tenant must not carry dung and compost off the demised premises (i), or remove anything except according to the custom of the country (k). It has been laid down as a general rule that he is bound to consume the produce on the demised premises (l),

Ch. 294; Meredith v. Wilson (1893), 69 L. T. 336; cf. Craig v. Greer, [1899] 1 I. R. 258. See, too, Graham v. Craig, [1902] 1 Ir. R. 264, C. A.

(c) I.e., such produce as would be consumed on the farm if it were treated in a husbandlike manner:

see infra, note (e).

(d) Per Gibbs, C.J., in Brown v. Crump (1815), 1 Marsh. 567; Powley v. Walker (1793), 5 T. R. 373; judgment in Onslow v. Anon. (1809), 16 Ves. 173; Hallifax v. Chambers (1839), 4 M. & W. 662.

(e) Per Lord Ellenborough, C.J., in Legh v. Hewitt (1803), 4 East,

pp. 159, 160.

(f) Judgment of Lawrence, J., in Legh v. Hewitt, 4 East, p. 161.

(g) Legh v. Hewitt, 4 East, 154, 160. (h) Brown v. Crump (1815), 1 Marsh. 567. See judgment in Granger v. Collins (1840), 6 M. & W. at p. 461.

(i) Powley v. Walker (1793), 5 T. R. 373; Gough v. Howard (1801), Pooks Add Con 197

Peake, Add. Cas. 197.

(k) Onslow v. Anon. (1809), 16 Ves. 173.

(1) Brown v. Crump (1815), 1 Marsh. at p. 569. that is, such produce as would be consumed thereon if the farm were treated in a husbandlike manner; and it has been said that the tenant may carry hay and straw off the premises, if the practice is not contrary to the custom of the country, or prohibited by the lease or agreement under which he holds (m). The custom of the country relating to cultivation will be excluded by an express or implied agreement inconsistent with it (n). An injunction will be granted to restrain any improper removal of produce (o).

A general restriction upon selling certain crops under an execution is imposed by the Sale of Farming Stock Act, 1816, 56 Geo. 3, the seventh section of which is as follows:-

c. 50, s. 7.

"No sheriff shall, by virtue of any process whatsoever, sell or Sheriff not to dispose of any clover, rye-grass, or any artificial grass or grasses whatsoever, which shall be newly sown, and be growing under corn. any crop of standing corn."

sell clover, &c. sown with

The rule that the customs of the country are incorporated in Custom. a lease, save in so far as they are expressly or impliedly excluded, The relations between landlord and is well established (p). tenant have long been regulated upon the supposition that all customary obligations not altered by the contract are to remain in force (q). A custom which is at variance with the common law can only be established by proof of immemorial user (r); but this rule does not apply to a custom not touching the common law, and an agricultural custom is good provided it is reasonable (s), and has existed for a sufficient length of time—forty or fifty years—to be well established (t). Since a custom is local law, it cannot, it has been said, be got rid of except by statute, though long-continued non-user is strong evidence of the custom never having existed (u). But this rule only applies to custom

⁽m) Gough ∇ . Howard (1801), Peake, Add. Cas. 197.

⁽n) Hutton v. Warren (1836), 1 M. & W. 466. See Webb v. Plummer (1819), 2 B. & A. 746; Roberts v. Barker (1833), 1 Cr. & M. 808; Clarke v. Roystone (1845), 13 M. & W. 752; Greenslade v. Tapscott (1834), 1 C. M. & R. 55; also infra, Chap. VII., Sect. 3.

⁽o) Onslow v. Anon. (1809), 16 Ves. 173. See Walton v. Johnson (1848), 15 Sim. 352, where land had been let by a receiver appointed by the Court.

⁽p) See Wigglesworth v. Dallison (1779), 1 Dougl. 201; 1 Sm. L. C. 11th ed., p. 545 and notes.

⁽q) See judgment in Hutton v. Warren (1836), 1 M. & W. p. 475.

⁽r) Litt. s. 170; Dashwood v. Magniac, [1891] 3 Ch. 306, p. 370, per Kay, L.J.

⁽s) See Tyson v. Smith (1838), 9 A. & E. 406.

⁽t) Tucker v. Linger (1883), 8 App.

⁽u) Hammerton v. Honey (1876), 24 W. R. 603,

established by immemorial usage. The usage of a particular estate, or of the property of a particular individual, however extensive, has not the force of a custom, for the tenant may not be aware of it (x). Where a custom is proved to exist, it is applicable to all tenancies in whatever way created, whether verbal or in writing, unless expressly or impliedly excluded by the terms of the agreement (y).

Where a farm was let with a reservation of mines and minerals and of quarries, a custom allowing the tenant to sell flints thrown up in the regular course of husbandry was held to be reasonable (z).

(2) WHERE THERE IS AN EXPRESS AGREEMENT.

Construction of provisions relating to mode of cultivation.

The following cases illustrate the construction of express provisions relating to the mode of cultivation in general, and to hay, straw, and manure in particular:—

COVENANT not to sow land with wheat more than once in four years, nor with more than two crops of any kind of grain whatsoever during the same period of four years. Applies to any four years of the term, however taken, and not to each successive four years from the commencement (a).

Covenant to cultivate, on the four-course system, according to the custom of the country. Means only so far as is universally obligatory by the custom of the country (b). A jury may find that the tenant ploughed as much as he was bound to do by the custom (b).

AGREEMENT to manage and quit premises agreeably to the manner in which the same have been managed and quitted by the former tenants. A tenant, without notice, is not bound by the terms upon which the former tenants held. The only rule by which, according to the agreement, he is to be guided, is the condition of the estate and the mode in which it was managed at the time of his taking possession (c).

- (x) Womersley v. Dally (1857), 26 I. J. Ex. 219.
- (y) Wilkins v. Wood (1848), 17 L. J. Q. B. 319.
- (z) Tucker v. Linger (1883), 8 App. Cas. 508.
- (a) Fleming v. Snook (1842), 5 Beav. 250.
- (b) Newson v. Smythies (1859), 1 F. & F. 477, 479. As to the meaning of a covenant to farm on the fourcourse system, see Rankin v. Lay (1860), 2 D. F. & J. 65.

(c) Liebenrood v. Vines (1815), 1 Mer. 15, 18. See Lord Hood v. Kendall (1855), 17 C. B. 260.

- COVENANT to manage pasture in a husbandlike manner. equivalent to a covenant not to convert it into arable land (d).
- COVENANT to cultivate and manage a farm, and every part thereof, in a good, proper and husbandlike manner, according to the best rules of husbandry practised in the neighbourhood. not broken by the conversion of the farm into market gardens, the farm being near London, and it being proved that other farms in the neighbourhood had been so converted, that being found to be the most profitable form of cultivation (e).
- COVENANT, in a lease empowering the lessee to build, to cultivate the part of the demised lands on which no buildings should be erected, in a husbandlike manner. Applies to land on which buildings have been erected and subsequently pulled down(f).
- COVENANT to permit the landlord in the last year of the term to sow clover among the tenant's barley. The landlord must use due diligence to ascertain for himself when the tenant sows his barley (g).
- COVENANT at the end of the lease to leave the turnip or fallow breaks once ploughed for the incoming tenant. The words "turnip or fallow breaks" mean the land which would, in the natural course of good husbandry, be ploughed and left fallow for the purpose of being planted with turnips (h).
- COVENANT not to remove from the farm, during the last year of the Construction term, any of the hay, &c., which shall grow on the farm. The lessee is prohibited from removing hay, &c., which is hay, straw, on the farm in the last year of the term, at whatever time during the term it may have grown (i).

of provisions relating to

AGREEMENT that tenant shall not sell any straw or manure grown or produced on the farm without the licence of the landlord under certain penalties, recoverable as additional rent. Extends to straw sold by the tenant after the determination of the tenancy (k).

(d) Per Lord Eldon, in Drury v. Moline (1801), 6 Ves. 328. (e) Meux v. Cobley, [1892] 2 Ch. 253. (f) Hills v. Rowland (1853), 4 D. M. & G. 430. (g) Hughes v. Richman (1774),

Cowp. 125. (h) Hunter v. Miller (1863), 9 L. T. 159.

(i) Gale v. Bates (1864), 3 H. & C. 84. (k) Massey v. Goodall (1851), 17 Q. B. 310.

- AGREEMENT that tenant shall consume the hay on the premises, or for every load of hay removed shall bring two loads of manure. The bringing on the manure is not a condition precedent to the carrying off the hay as between the landlord and tenant, but after the tenant has quitted possession of the premises the succeeding tenant may refuse to permit the hay to be removed until the manure is brought on (l).
- AGREEMENT that "value" of straw or hay sold off is to be returned in manure on the land. The Court of Exchequer was equally divided upon the question whether the market value of the straw is to be returned in manure, or so much manure only is to be spent upon the land as the hay or straw would have produced (m).
- AGREEMENT that tenant shall be paid "a fair price" for straw left on the premises at the end of his tenancy, not containing any stipulation as to payment for manure. The tenant is to be paid for the straw at a fodder price only—i.e., one-half the market price (n).
- AGREEMENT by tenant to pay an additional rent for every ton of hay, &c., sold off or removed from the premises. Hay of very bad quality and unfit to be eaten by cattle is within the meaning of this agreement (o).
- Covenant that lessee shall not sell or carry away from the demised premises any hay, straw or manure grown or produced thereon without the consent of the lessor, under the increased rent of 10l. for every ton so sold or carried away, but that the lessee will consume the hay and straw by his cattle. The lessee is entitled to sell the hay and straw on payment of the increased rent (p).
- Condition not to sell or convey away any dung, &c., from a farm. Extends to manure made on the farm by cows

(1) Smith v. Chance (1819), 2 B. & A. 753, 755. And, as to covenants of this nature, see Richards v. Bluck (1848), 6 C. B. 437; and as to the prolongation of the term for the purpose of the covenant, see E. of St. Germains v. Willan (1823), 2 B. & C. 216.

(m) Lowndes v. Fountain (1857), 11 Ex. 487. The opinion of Parke, B.,

was in favour of the latter construction.

(n) Clarke v. Westropė (1856), 18 C. B. 765. As to the meaning of a "fair valuation," see Cumberland v. Bowes (1854), 15 C. B. 348.

(o) Fielden v. Tattersall (1863), 7

L. T. 718.

(p) Legh v. Lillie (1860), 6 H. & N. 165.

sold by the tenant and provided with provender by the buyer (q).

COVENANT to manure land with two sets of muck within the space of six of the last years of the term, the last set of muck to be laid upon the premises within three years of the expiration of the term. The tenant may lay on both sets of muck within the three last years of the term (r).

A covenant to keep land in good husbandlike condition will Injunction. not be enforced by mandatory injunction (s); nor will a covenant to repair hedges and fences and buildings (t), or that the tenant will at all times during the term keep on the farm a proper and sufficient stock of sheep, horses and cattle (u). Such an injunction would involve a superintendence of the management of agricultural land, such as the Court will not undertake (u). But an injunction will be granted against a specific act in violation of a covenant, as the breaking up of meadow land (x), or removing produce which should be consumed on the land (y).

Where a tenant is under obligation, either by custom or by Provisions in express agreement, not to sell produce off the land, the Sale of case of Farming Stock Act, 1816, provides that a sale of produce under an execution against the tenant can only be made to a purchaser who undertakes to observe this obligation.

The first section of the Act provides that no sheriff shall, by 56 Geo. 3, virtue of any process of any court of law (except process at the suit of the Crown(z)), carry off, or sell or dispose of for the purpose of being carried off, from any lands let to farm, any straw, chaff, colder, turnips, or manure, nor any hay, grass, or grasses, nor any tares or vetches, nor any roots or vegetables, sheriff not to being produced of such lands, in any case where, according to any covenant or written agreement entered into for the benefit of case, or hay, the owner or landlord of the farm, such hay, &c. ought not to be taken off such lands, or which, by the tenor or effect of such covenants or agreements, ought to be used or expended thereon,

execution, &c.

c. 50, s. 1.

sell off straw, &c., in any &c., contrary to covenants.

```
(q) Hindle v. Pollitt (1840), 6 M.
& W. 529.
```

⁽r) Pownall v. Moores (1822), 5 B. & A. 416, 418.

⁽s) Musgrave v. Horner (1875), 31 L. T. 632.

⁽t) Rayner v. Stone (1762), 2 Eden, 128.

⁽¹⁾ Phipps v. Jackson (1887), 56

L. J. Ch. 550.

⁽x) Lord Grey de Wilton v. Saxon (1801), 6 Ves. 106.

⁽y) Crosse v. Duckers (1873), 27 L. T. 816. See Phipps v. Jackson, supra, per Stirling, J.

⁽z) Rex v. Osbourne (1818), 6 Price,

The second section of the same Act provides that the tenant or

occupier of any lands let to farm against whose goods any process

of law shall issue, shall, on having knowledge of such process,

give a written notice to the sheriff or other officer executing the

same of such covenants or agreements, and of the name and

officer shall forthwith send a notice by post to the owner or land-

lord (as to whose name and residence he is to make due inquiry

before any sale of any crops (sect. 5)), and also to the known

steward or agent of such owner or landlord, stating the fact of

possession having been taken of any such crops or produce as are

mentioned in the first section of the Act; and such sheriff or

other officer shall, in the absence or silence of such owner or

landlord or his agent, delay the sale of such crops or produce

until the latest day he lawfully can appoint for such sale.

and of which covenants or agreements such sheriff shall have received a written notice before he shall have proceeded to sale.

Sect. 2. Tenant to give notice of covenants to sheriff.

Sheriff to give residence of the owner or landlord; and such sheriff or other notice of seizure to landlord.

Sheriff may dispose of produce to person agreeing to expend it on land.

Sect. 3.

The Act then goes on to provide (by sect. 3) that such sheriff or other officer may dispose of any crops or produce thereinbefore mentioned to any person who shall agree in writing, in cases where no covenant or written agreement shall be shown, to use and expend the same on such lands in such manner as shall accord with the custom of the country; and in cases where any covenant or written agreement shall be shown, then according to such covenant or written agreement; and after such disposal it shall be lawful for such person to use all such necessary barns, buildings, yards, and fields for the purposes of consuming such produce, as such sheriff or other officer shall assign to him for that purpose, and which such tenant or occupier would have been entitled to, and ought to have used, for the like purpose on such lands.

Sect. 11. Assignee of bankrupt, &c., not to use produce in any other manner than tenant might have done.

It is further provided, by the eleventh section of the same Act, that no assignee of any bankrupt, nor any assignee under any bill of sale, nor any purchaser of the goods or crop of any person employed in husbandry on any lands let to farm, shall take, use, or dispose of any hay or other produce of such lands, or any manure or other dressings intended for such lands and being thereon, in any other manner, and for any other purpose, than such bankrupt or other person so employed in husbandry ought to have taken, used, or disposed of the same.

This last section applies to an ordinary sale by the tenant

himself (a), but not to a sale by the landlord under a distress (b); and it applies to a sale by a trustee in bankruptcy under the Bankruptcy Acts now in force (c), notwithstanding disclaimer of the lease (d).

SECT. VI.—FENCES.

						Ρ.	AG K
(1) Liability to repair	•	•	•	•	•	•	375
Obligation of tenant for years	•		•	•	•	•	375
" as between adjoining or	vners	•	•	•	•	•	375
(2) Liability to keep up boundaries.	•		•	•	•	•	376
(3) Ownership of fences	•	•	•	•	•	•	377

(1) LIABILITY TO REPAIR.

It is so notoriously the duty of the actual occupier of lands to Obligation of repair the fences, and so little the duty of the landlord, who is not in possession, that, without any agreement to that effect, the landlord may maintain an action against his tenant for not so doing, upon the ground of the injury done to the inheritance (e); and the tenant, on the other hand, may take sufficient wood for Obligation of the purpose of repair (f). It would seem, however, that a tenant at will or from year to year, since he is not liable for mere or at will. permissive waste, is not bound to make good the decay of the fences (g).

tenants from year to year

Where a lessee of a brickfield caused the fall of one of the fences bounding the field by excavating clay from under it, contrary to the covenants in his lease, the Court granted a mandatory injunction to compel its restoration (h).

The general rule of law is, that a man is only bound to take Obligation care that his cattle do not wander from his own land and trespass upon the lands of others. Hence, where two persons have owners. adjoining fields, and there is no hedge between them, each must take care that his beasts do not trespass upon his neighbour's land (i). But there is in general no liability to fence as between the owners of adjoining property. Such an obligation must be

as between adjoining

- (a) Wilmot v. Rose (1854), 3 E. & B. **563.**
- (b) Hawkins v. Walrond (1876), 1 C. P. D. 280.
- (c) Cf. Lybbe v. Hart (1883), 29 Ch. D. 8.
- (d) Lybbe v. Hart, supra. See Schofield v. Hincks (1888), 58 L. J. **U** B. 147.
 - (e) Judgment of Lord Kenyon,
- C.J., in Cheetham v. Hampson (1791), 4 T. R. at p. 319. See Whitfield v. Weedon (1771), 2 Chit. 685.
 - (f) Co. Litt. 53 b.
 - (y) Supra, p. 352.
- (h) Newton v. Nock (1880), 43 L. T. 197.
- (i) 2 Rol. Abr. 565, pl. 7. See Churchill v. Evans (1809), 1 Taunt. **529.**

created in some definite way, as by prescription, or by contract, or by statute (k). The last case frequently occurs upon the inclosure of commons. It follows that there is no implied obligation on the part of a lessor to keep up the fences of closes which he retains in his own hands, and which abut upon land demised to a tenant, so as to prevent the tenant's cattle from straying on to them (l). It follows, also, that a man is under no legal obligation to keep up fences between adjoining closes of which he is the owner; and even where adjoining lands, which have once belonged to different persons, one of whom was bound to repair the fences between the two, afterwards become the property of the same person, the pre-existing obligation to repair the fences is destroyed by unity of ownership. And where the person who has so become the owner of the entirety afterwards parts with one of the two closes, the obligation to repair the fences will not revive, unless express words are introduced into the conveyance for that purpose (m).

(2) LIABILITY TO KEEP UP BOUNDARIES.

Obligation of tenant to keep up boundaries. Among other obligations resulting from the relation of landlord and tenant, a tenant contracts an obligation to keep his landlord's property distinct from his own property during the term, and at the end of the term to leave it clearly distinct, and not in any way confounded with his own. If he has put his landlord's property and his own together, for his own convenience, in order to make the most of it during his tenancy, he is bound at the end of the term to render up specifically the landlord's land; and if the tenant has so confounded the boundaries that the landlord's land cannot be ascertained, a court of equity will inquire what was the value of the landlord's estate, valued fairly, but to the utmost, as against the tenant (n).

Where the tenant is the owner of land immediately adjoining the demised land, it is his duty, not merely to leave the boundary

⁽k) Erskine v. Adeane (1873), L. R. 8 Ch. 756. As to proof of obligation to repair, see Boyle v. Tamlyn (1827), 6 B. & C. 329; Barber v. Whiteley (1865), 34 L. J. Q. B. 212.

⁽l) Erskine v. Adeane (1873), L. R. 8 Ch. 756.

⁽m) Per Bayley, J., in Boyle v. Tamlyn (1827), 6 B. & C. at p. 337.

⁽n) Judgment of Lord Eldon in Att.-Gen. v. Fullerton (1813), 2 V. & B. at p. 264. See Att.-Gen. v. Stephens (1855), 6 D. M. & G. 111, p. 133; Aston v. Exeter (1801), 6 Ves. p. 293. As to ascertainment of boundaries where there is a rent-charge issuing out of lands, see Searle v. Cooke (1889), 43 C. D. 519.

distinct at the end of the term, but to keep it distinct during the term; and the Court has jurisdiction during the term to ascertain the boundary if it has been confused (o).

(3) Ownership of Fences, &c.

There is no rule entitling the owner of a ditch to claim in respect of it any certain or particular width of ground. No man making a ditch can cut into his neighbour's soil; but usually he cuts it to the very extremity of his own land. He is, of course, bound to throw the soil which he digs out upon his own land, and often he plants a hedge on the top of it. If he afterwards cuts beyond the edge of the ditch, which is the extremity of his land, he cuts into his neighbour's soil and is a trespasser (p). Hence, where two adjacent fields are separated General preby a hedge and a ditch, the hedge prima facie belongs to the owner of the field in which the ditch is not (q). If there are two ditches, one on each side of the hedge, the ownership of the hedge must be proved by showing acts of ownership (q).

sumption.

The common use of a wall separating adjoining lands belonging to different owners, is presumptive evidence that the wall belongs to the owners of those adjoining lands as tenants in common; for the law will presume that the acts of enjoyment were lawful (r).

SECT. VII.—TREES.

_									PAGE
(1) Where there is	no exp	ress agre	\mathbf{ement}	•	•	• •	•	•	377
Property in	trees as	between	landlord	and	tenant	t			377
"	,,	,,	,,	and	third	persons	•	•	378
,,	bushes	, &c.	• •	•	•				378
Estovers		• •		•	•	•	•	•	378
Windfalls	•	•		•	•				378
(2) Where there is	an exp	ress agre	ement	•	•		•	•	379
Construction	n of cov	renants r	elating to	trees	s. &c			_	379

WHERE THERE IS NO EXPRESS AGREEMENT. (1)

The general property in timber-trees is in the landlord (s). Oak, ash and elm, which are timber-trees everywhere by the general

Property in between landlord and tenant.

(o) Spike v. Harding (1878), 7 Ch. D. 871. (p) Per Lawrence, J., in Vowles v. Miller (1810), 3 Taunt. at p. 138.

(q) Per Bayley, J., in Guy v. West (1808), cited 2 Selw. N. P. 1244. See Noye v. Reed (1827), 1 Man. & Ry. 63. (r) Cubitt v. Porter (1828), 8 B. & C. 257, 259, note (b), 266. See, too, Matts v. Hawkins (1813), 5 Taunt. 20. (s) Berriman v. Peacock (1832), 9 Bing. 384, 387.

rule of the realm, become timber at twenty years' growth (t). By the custom of the country, in some places, trees are considered as timber which, generally speaking, are not so (u). When a particular kind of wood is admitted to be timber by the custom of the country, the rule of law applicable to timber-trees in general attaches upon it, so as to give it the properties and privileges of timber at twenty years' growth (x).

Property in trees as between landlord and third person. The landlord of a tenant from year to year, although there is no reservation of the timber on the premises, may bring an action of trespass against a third person for carrying it away after it has been cut down (y). Where a tree grows near the land of two persons, so that the roots derive nourishment from the soil of both, the property in the tree is to be ascertained by showing where it was first sown or planted (z).

Property in bushes.

Estovers.

The property in bushes is in the tenant, but if he exceeds his right, as by grubbing up or destroying fences, he may be liable to an action of waste (a). Every tenant, except a tenant at will, may take sufficient wood to repair the walls, pales, fences, hedges and ditches as he found them; but he cannot make new fences, &c. He may also take wood to burn in the house, or for repairing the house, and for making and repairing implements of husbandry (b); but not for sale (c). If he cuts down growing wood to burn when he has a sufficient quantity of dead wood, he will be guilty of waste (b). In felling timber for repairs, he is bound to confine himself to such trees as are adapted for that purpose, and to employ them accordingly (d).

By custom the landlord may be entitled to ash-poles or shoots growing from old stools, and fit for cutting every seventeen or eighteen years (e).

Windfalls.

Windfalls of decayed timber-trees belong to the tenant for life or years, and windfalls of trees which are not timber may, in the

⁽t) Judgment of Lord Ellenborough, C.J., in Aubrey v. Fisher (1809), 10 East, at p. 455; Co. Litt. 53 a; Dunn v. Bryan (1872), Ir. R. 7 Eq. 143. See Whitty v. Dillon (1860), 2 F. & F. 67.

⁽u) See Chandos v. Talbot (1731), 2 P. W. at p. 606; Aubrey v. Fisher (1809), 10 East, 446; Honywood v. Honywood (1874), 18 Eq. 306, 309; Dashwood v. Magniac, [1891] 3 Ch. 306; Co. Litt. 53 a.

⁽x) Aubrey v. Fisher, supra.

⁽y) Ward v. Andrews (1772), 2 Chit. 636.

⁽z) Holder v. Coates (1827), M. & M. 112.

⁽a) Berriman v. Peacock (1832), 9 Bing. 384, 387.

⁽b) Co. Litt. **53** b.

⁽c) Co. Litt. 53 b. See Courtment v. Ward (1802), 1 Sch. & Lef. 8.

⁽d) Simmons v. Norton (1831), 7 Bing. 640, 649.

⁽e) Lord Hood v. Kendall (1855). 17 C. B. 260.

absence of express exception, be claimed by him(f); and it is the same if such trees are cut down by the lessor (g). But windfalls of sound timber-trees, as between lessee and lessor, belong to the lessor (f).

(2) WHERE THERE IS AN EXPRESS AGREEMENT.

The following cases illustrate the construction of covenants Construction relating to trees, &c.:-

of covenants relating to

COVENANT in a lease of a farm and quarries of stone thereon, trees, &c. with liberty to work the quarries, and containing an exception of trees, not to commit waste by cutting down timber-trees, saplings, or any other wood or underwood. Cutting down wood and underwood necessary to be cut down in order to work a quarry on the demised premises is not a breach of the covenant (h).

COVENANT that tenant shall not during the term cut down any of the coppice of less than ten years' growth or at any unreasonable time of the year. At the end of the term the landlord agrees to pay to the tenant the value of all such growth of coppice and underwood as shall be then standing and grow-The landlord is bound to pay the tenant for the value of all the coppice of less than ten years' growth left standing on the demised premises at the end of the term, though no special consideration appears on the face of the deed for the landlord's agreeing to make a compensation to the tenant for the value of the part of the coppice which the tenant was not entitled to cut (i).

COVENANT to deliver timber growing on the premises sufficient for the repairs thereof. The timber must be sufficient in quality as well as quantity (k).

COVENANT to deliver up at the end of the term all the trees standing in the orchard at the time of the demise, "reasonable use and wear only excepted." If the trees in the orchard are too crowded, the removal of such as are past bearing must be considered as a reasonable use of the orchard and trees (l).

(i) Love v. Pares (1810), 13 East, 80.

(k) Snell v. Snell (1825), 4 B. & C.

(1) Doe v. Crouch (1810), 2 Camp.

741, 749.

449, 450.

⁽f) Craig on Trees, 123. See Herlakenden's Cuse (1589), 4 Rep. 62 a.

⁽g) Channon v. Patch (1826), 5 B. & C. 897. (h) Doe v. Price (1849), 8 C. B. 894.

COVENANT not to fell, stub up, lop, or top timber-trees excepted out of the demise. The executor of the lessor is entitled to sue for a breach of this covenant committed in the lifetime of the testator (m).

Covenant not to remove or grub up or destroy trees. Removing trees from one part of the premises to another, or taking away trees, though the lessee plants a greater quantity than he takes away (those taken away not being dead), will constitute breaches of this covenant (n).

SECT. VIII.—INSURANCE.

		PAUL
Construction of general covenant to insure	•	380
,, covenant to insure in names of specified persons	•	 381
Failure to insure		381
Statutory provision in case of fire		 382

Construction of general covenant to insure and keep insured.

Under a general covenant to insure and keep insured (o) the demised premises, the lessee must keep them insured during the whole term (p); the covenant is broken if they are uninsured at any time (q), although no inconvenience or loss may be occasioned to the landlord (r). The insurance must be made within a reasonable time after the execution of the lease, and if any delay occurs, the onus of showing that such delay is reasonable will rest on the tenant (s). But if the premises remain uninsured for a short time, the lessor cannot recover for a forfeiture for breach of covenant if by his conduct he has led the lessee to believe that the premises were properly insured by himself (t).

The insurance must extend to the whole of the premises specified in the covenant, since a breach will be committed if any portion remains uninsured (u). Though no fire occurred during the period for which premises remained uninsured, a

(m) Raymond v. Fitch (1835), 2 Cr. M. & R. 588. As to the construction of exceptions of trees, see supra, p. 143.

(n) Doe v. Bird (1833), 6 C. & P. 195.

(a) Where the lessor has contracted to purchase the lesse, the lessee remains liable on this covenant till completion: Newman v. Maxwell (1899), 80 L. T. 681 (and see this case as to the damages recoverable).

(p) See Heckman v. Isaac (1862), 6 L. T. 383.

(1830), 1 B. & Ad. at p. 438. (r) Doe v. Shewin (1811).

(r) Doe v. Shewin (1811), 3 Camp. 134, 137. See Wilson v. Wilson (1854), 14 C. B. 616; Price v. Worwood (1859). 4 H. & N. 512; Doe v. Laming (1814), 4 Camp. 73.

(q) See judgment in Doe v. Peck

(s) Doe v. Ulph (1849), 13 Q. B. 204. (t) Due v. Sutton (1841), 9 C. & P.

(t) Doe v. Sutton (1841), 9 C. & P. 706.

(u) Penniall v. Harborne (1848), 11
 Q. B. 368.

of covenants

to insure in

specified

jury may give more than nominal damages to the landlord in respect of the possibility of loss to which he has been exposed (x).

A covenant to insure, which does not specify in what Construction sort of office such insurance is to be effected, is not void for uncertainty (y); but express provision is frequently made both names of as to the office in which the insurance is to be effected and the persons. persons in whose names it is to be taken out. These particulars must be carefully observed by the tenant. A covenant to insure and keep insured in the joint names of the lessee and lessor will be broken by an insurance in the name of the lessee only (z); but if the conduct of the lessor has been such as to induce the lessee as a reasonable and cautious man to believe that he would do all that was required of him by insuring in his own name, the lessor cannot recover for a forfeiture (a). Although this covenant is not literally performed by an insurance in the name of the lessor only, it is substantially performed for the benefit of the lessor, and he cannot recover for a breach of the covenant; the stipulation for the insurance in the name of the lessee being for the exclusive benefit of the latter (b). A covenant to insure in the joint names of the lessor and his assigns and of the lessee cannot be broken after assignment by the lessor until notice to the lessee (c). A covenant to insure in the names of three lessors is broken by an insurance effected by the lessee in their names jointly with his own (d). Where the covenant is to insure in such office as the lessor shall name, it is doubtful whether it is broken by non-insurance if the lessor has not been asked and has not himself named any office (e).

So long as the terms of a covenant to insure are not complied Failure to with, there is a continuing breach, and the receipt of rent by the landlord will only operate as a waiver of breaches committed before the time when such rent was received (f). The assignee

- (x) Hey v. Wyche (1842), 12 L. J. Q. B. 83, 85.
- (y) Doe v. Shewin (1811), 3 Camp. 134.
- (2) Doe v. Gladwin (1845), 6 Q. B. 953. See Doe v. Rowe (1826), Ry. & M. 343.
- (a) Doe v. Rowe (1826), Ry. & M. 343, 349. As to relief against forfeiture for a breach of a covenant to insure, see infra, Chap. VI., Sect. 2 (3) (iv.).
- (b) Havens v. Middleton (1853), 10 Hare, 641.

- (c) Crane v. Batten (1854), 23 L. T. O. S. 220.
- (d) Penniall v. Harborne (1848), 11 Q. B. 368.
- (e) Lillie ∇ . Legh (1858), 3 De G. & J. 204.
- (f) Doe v. Gladwin (1845), 6 Q. B. As to proof of non-insurance, see Chaplin v. Reid (1858), 1 F. & F. 315; as to the requirement of indorsement on the death of the assured, see Doe v. Laming (1814), 4 Camp. 73; as to forfeiture, see infra, Chap. VI., Sect. 2 (3) (ii.).

of the lessor cannot take advantage of a right of re-entry for a breach of a covenant to insure committed in the time of the lessor (g).

Subrogation.

A policy of fire insurance is a contract of indemnity, and on payment of the loss the insurer is entitled to be put in the place of the assured, and to be subrogated to all his rights, whether these arise by contract, or by way of remedy for tort, or in any other manner (h); and if subsequently the assured receives compensation from other sources, the insurer is entitled to recover so much as is not required for the assured's indemnification (i).

Right of lessee to have premises rebuilt.

Under the Fires Prevention (Metropolis) Act, 1774(k), s. 83, persons interested in premises (l) destroyed by fire can require the insurance office to spend the insurance moneys in rebuilding (m). Request to this effect must be made before the office has settled with the insurer (n).

SECT. IX.—TAXES.

										PAGE
(1)	Where there is no express agreemen	t	•			•		•	•	382
` /	Where there is no express agreemen Taxes which fall on the landlord	•			•	•	•	•		382
	Poor rate				•					383
		•	_				•	_		384
(2)	Where there is an express agreemen		•	•	•					385
(-)	Agreements relating to property t	tax	and	tith	e ren	t-cha	irge			386
•	Construction of agreements relati	ing	to v	arm	ent o	f tax	Kes			386
	•	6		- , -			es, a		8-	
	ments, and other burdens			"	•		,			388

(1) WHERE THERE IS NO EXPRESS AGREEMENT.

Taxes which fall on landlord. As a general rule, rates and taxes are payable in the first instance by the tenant, but in certain cases he can obtain repayment by deducting the amount from his next payment of

(g) Crane v. Batten (1854), 23 L.T. O. S. 220. For the result of failure to insure as between lessor, lessee, and underlessee, see Logan v. Hall (1847) 4 C. B. 598.

(h) Castellain v. Preston (1883), 11 Q. B. D. 380, per Brett, L.J., p. 388. See West of England Fire Insurance Co. v. Isaacs (1896), 12 T. L. R. 466.

(i) Darrell v. Tibbitts (1880), 5 Q. B. D. 560; Castellain v. Preston, supra.

(k) 14 Geo. 3, c. 78.

(1) Trade fixtures put up by the tenant are not included: Ex parte Gorely (1864), 4 D. J. & S. 447.

(m) In Ex parte Gorely, supra, Lord Westbury expressed the view that the above 83rd section is of

universal application, and not limited in its operation to the metropolitan district. That view may require reconsideration: see per Lord Selborne and Lord Watson in Westminster Fire Office v. Glasgow Provident Society (1888), 13 App. Cas., at pp. 713, 716. If it be correct it follows that a covenant to insure premises not situate within the limits mentioned in the above Act, being in effect a covenant to repair, will run with the land. See Vernon v. Smith (1821), 5 B. & A. 1, 5; infra, Chap. V., Sect. 1 (4).

(n) Simpson v. Scottish Union Insurance Co. (1863), 1 Hem. & M. 618.

Thus he can deduct the landlord's share of property rent. tax (o), or the landlord's proportion of the land tax or sewers rate (p). Formerly he could deduct also tithe rent-charge, but this is not now payable by the tenant (q). One-half of the cattle plague rate may be deducted from the growing rent due to the owner of the premises in respect of which the rate is levied (r) and by various statutes expenses incurred in respect of the removal of nuisances or of the improvement of premises, which are intended to fall upon the owner, are made recoverable from the occupier, with the right for the occupier to deduct the amount from his rent. Expenses in respect of the removal of nuisances can thus be deducted under the Public Health Act, 1875 (s), s. 104, and the Public Health (London) Act, 1891 (t), s. 121. In the case of expenses for paving, &c., in respect of which a private improvement rate can be made under the former Act, an occupier at a rack-rent can deduct three-fourths of the amount paid by him on account of the rate, and an occupier at a rent less than the rack-rent can deduct from the rent such proportion of three-fourths of the rate as his rent bears to the rackrent (u).

Poor rates are ordinarily assessed upon, and payable by, the Poor rate. occupier of premises (v); but in the case of short tenancies the tenant may be entitled to deduct the rate from his rent, and in the case of small tenements the landlord has the option, and may be compelled, to compound for the rates.

The rating of owners instead of occupiers is now regulated by

(o) Supra, p. 229.

(q) Supra, p. 232.

(r) 32 & 33 Vict. c. 70, s. 89.

(s) 38 & 39 Vict. c. 55.

Olave's Board of Works, [1898] 1 Q. B. 775, 781; and Harris v. Hickman (work done before service of notice by sanitary authority), [1904] 1 K. B. 13, 17.

(u) 38 & 39 Vict. c. 55, s. 214. As to deducting drainage tax imposed by a local Act, see Dawson v. Linton

(1822), 5 B. & A. 521.

(v) As to the exemption of the occupiers of agricultural land from half the amount of rates made for public local purposes, see the Agric. Rates Act, 1896 (59 & 60 Vict. c. 16). As to the rating of plantations and mines, see the Rating Act, 1874 (37 & 38 Vict. c. 54); D. of Devonshire v. Barrow Steel Co. (1877), 2 Q. B. D. 286; Chaloner v. Bolckow (1878), 3 App. Cas. 933.

⁽p) Supra, pp. 230, 231; London Government Act, 1899 (62 & 63 Vict. c. 14), s. 12. As to recovery of expenses of a party wall under the repealed Metrop. Building Act, 1855 (now replaced by the London Building Act, 1894, 57 & 58 Vict. c. cexiii.), see Earle v. Maugham (1863), 14 C. B. N. S. 626; and on the earlier provision of 14 Geo. 3, c. 78, s. 41, see Southall v. Leadbetter (1789), 3 T. R. 458; Barrett v. D. of Bedford (1800), 8 T. R. 602.

⁽t) 54 & 55 Vict. c. 76. See, as to this statute, Gebhardt v. Saunders, [1892] 2 Q. B. 452; Andrew v. St.

the Poor Rate Assessment and Collection Act, 1869 (x). Under sect. 1 of that Act, the occupier of any rateable hereditament let to him for a term not exceeding three months can deduct poor rate paid by him from his rent; and, under sect. 2, no such occupier is compellable to pay to the overseers at one time, or within four weeks, a greater amount of the rate than would be due for one quarter of a year. A tenant from week to week, whose tenancy is determinable by a week's notice on either side, is an occupier "for a term not exceeding three months" within the meaning of those two sections (y). Under sect. 3 of the same Act, where the rateable value of a hereditament does not exceed 201. in the metropolis, 131. in Liverpool, 101. in Manchester or Birmingham, and 8L elsewhere, the owner may agree to pay the poor rates, whether the hereditament is occupied or not, upon a deduction not exceeding 25 per cent.; and compulsory rating of the owner in such cases is authorized by sect. 4(z).

Occupation of part of house.

The owner of a house, who occupies part of it, is liable to be rated for the whole, unless there is a separate occupation of the rest by some other person (a); and a person who lets lodgings and retains the control for the purpose of attending to the rooms, is rateable (b). But where a house is let in separate tenements the tenants are liable to be rated separately, notwithstanding that certain parts of the premises are used in common (c).

General district rate.

General district rates (d) are, as a rule, levied on the occupiers of property; but the owner, instead of the occupier, may, at the option of the urban authority, be rated (1) where the rateable value of the premises does not exceed 10l.; (2) where the premises are let to weekly or monthly tenants; and (3) where the premises are let in separate apartments, or where the rents become payable or are collected at any shorter period than

- (x) 32 & 33 Vict. c. 41. As to the implied repeal of sect. 19 of 59 Geo. 3, c. 12 (Poor Relief Act, 1819), see West Ham v. Fourth City Building Society, [1892] 1 Q. B. 654; and as to the construction of the Act, West Ham v. Iles (1883), 8 App. Cas. 386. See also 30 & 31 Vict. c. 102, s. 7.
- (y) Hammond v. Farrow, [1904] 2 K. B. 332.
- (z) Overseers of Norwood v. Salter, [1892] 2 Q. B. 118; and as to the position of the occupier if the owner fails to pay, see sects. 8 and 12.

- (a) R. v. St. Mary, Durham (1791), 4 T. B. 477.
- (b) Watkins v. Overseers of Milton (1868) L. R. 3 Q. B. p. 357; Allan v. Overseers of Liverpool (1874), L. R. 9 Q. B. p. 191. The landlord of a furnished house is liable for rates while the house is unlet: Staunton v. Powell (1867), Ir. R. 1 C. L. 182.
- (c) Allchurch v. Hendon Union, [1891] 2 Q. B. 436.
- (d) As to the "general rate" in metropolitan boroughs, see the London Government Act, 1899 (62 & 63 Vict. c. 14), ss. 10—12.

quarterly. Where the owner is rated, he is assessed on such reduced estimate as the urban authority deem reasonable of the net annual value, not being less than two-thirds nor more than four-fifths of such value; and where the reduced estimate is in respect of premises, whether they are occupied or unoccupied (e), the assessment may be made on one-half the amount at which the tenements would be liable to be rated if they were occupied and the rate were levied on the occupiers (f).

(2) WHERE THERE IS AN EXPRESS AGREEMENT.

In the case of the property tax it is not competent for the Property tax. parties to enter into any agreement whereby the burden would be shifted from the landlord to the tenant. This is the result of the Income Tax Act, 1842. Sect. 73 of that Act is as follows:---

"Provided always, that no contract, covenant, or agreement between landlord and tenant, or any other persons, touching the payment of taxes and assessments to be charged on their contrary to respective premises, shall be deemed or construed to extend to the duties charged thereon under this Act, nor to be binding binding. contrary to the intent and meaning of this Act; but that all such duties shall be charged upon and paid by the respective occupiers, subject to such deductions and repayments as are by this Act authorized and allowed; and all such deductions and repayments shall be made and allowed accordingly, notwithstanding such contracts, covenants, or agreements." And sect. 103 Sect. 103. of the same Act provides that all contracts, covenants, and agreements made or entered into, or to be made or entered into, for of rent withpayment of any rent in full, without allowing such deduction as aforesaid (i.e., for the property tax), shall be utterly void (so far to be void. as regards such non-allowance of the deduction) (g). A provision

5 & 6 Vict. c. 35, s. 73. Agreements meaning of Act not to be

for payment out deducting property tax

165; Readshaw v. Balders (1811), 4 Taunt. 57; Fuller v. Abbot (1811), ib. 105; Tinckler v. Prentice (1812), ib. 549. See Festing v. Taylor (1862), 3 B. & S. 217, 235. It was formerly held that where a landlord, who had agreed to allow property tax, distrained for the whole rent, the tenant could recover for the tax in an action for money had and received: Grahum v. Tate (1813), 1 M. & S. 609.

⁽e) A discretionary power to rate the owner in respect of premises, whether occupied or unoccupied, is thus given to the urban authority, provided the assessment is made on only one-half the rateable value: Reg. v. Burclay (1882), 8 Q. B. D.

⁽f) Public Health Act, 1875, **8.** 211.

⁽g) Gaskell v. King (1809), 11 East, L.T.

for reducing the rent if the property tax shall be repealed, is, however, valid (h).

Tithe rentcharge. Similarly tithe rent-charge is payable by the owner of the land out of which it issues, notwithstanding any contract between him and the occupier of such lands, and any contract between an occupier and owner, made after the passing of the Tithe Act, 1891 (i), for the payment of the tithe rent-charge by the occupier, is void (k).

A local Act imposing a rate half on the landlord and half on the tenant, notwithstanding any agreement to the contrary, has been held to apply only to agreements entered into before the Act came into operation (l).

Right to agree as to incidence of rates and taxes. Generally, however, statutes which throw the burden of an imposition primarily upon the landlord expressly reserve the right of the parties to arrange otherwise. This is the case with regard to expenses incurred for the abatement of nuisances under the Public Health Act, 1875 (m), and the Public Health (London) Act, 1891 (n), and with regard to rates made under Part VI. of the former Act (o). Where a tenant from year to year agreed to pay all outgoings, and in the course of the tenancy a new rate was imposed which the tenants, in the absence of agreement to the contrary, could deduct from their rents, it was held that the agreement did not apply to such new rate, and that the tenant could deduct it, but only from the current year's rent (p).

Agreements, &c., for payment of taxes The following cases illustrate the construction of agreements and covenants between landlord and tenant with respect to the payment of taxes:—

AGREEMENT, by tenant, to pay all taxes, &c. The words comprehend the land tax, although not specially mentioned (q), and other parliamentary taxes (r). In a lease for years rendering rent free from all taxes, the lessor is discharged

(i) I.e., 26th March, 1891.

(m) See sect. 104.

(r) Arran v. Crisp (1695), 12 Mod. 54.

⁽h) Colbron v. Travers (1862), 12 C. B. N. S. 181.

⁽k) Sect. 1. As to whether covenants for payment of rates, taxes, &c., formerly included tithe rentcharge, see Jeffery v. Neale (1871), L. R. 6 C. P. 240; Lockwood v. Wilson (1874), 43 L. J. C. P. 179; Parish v. Sleeman (1860), 1 D. F. & J. 326.

⁽l) Re Knight (1848), 1 Ex. 802.

⁽n) See sect. 121. (o) See sect. 226.

⁽p) Vestry of Mile End Old Town v. Whitby (1898), 78 L. T. 80.

⁽q) Amfield v. White (1825), Ry. & M. 246. See Hopwood v. Barefool (1710), 11 Mod. 237.

from all taxes whether old or new, which can be legally thrown on the lessee (s).

COVENANT, by lessor, to pay all taxes on the land demised. Does not include poor rates (t). The poor rate is not a tax on the land, but a personal charge in respect of the land (u); it is a burden falling on the occupier, whatever his interest, whether as tenant at will, or by any other tenure (x), and the owner is not compellable to bear it (y). But where by an Inclosure Act a corn rent was reserved "free from all taxes and deductions whatsoever, except land tax," it was held to be exempt from poor rate (z). "If the money is raised by taxation," said Abbott, C.J., "it is a tax."

COVENANT to pay parliamentary taxes. Includes the land tax (a) and all taxes directly imposed by Parliament; but not a county rate (b), or sewers rate (c), or an assessment levied under an Act, for repairing a bridge to the repair of which the owners of land are liable ratione tenuræ (d). A parliamentary tax is a tax imposed directly by Act of Parliament, and for the benefit of the whole kingdom; it does not include a rate for local purposes made under the authority of a local Act (e).

Covenant to pay parochial taxes and assessments. Apparently includes a county rate (f).

Covenant, by landlord, to pay land tax. The landlord is only liable to pay land tax in proportion to the rent reserved to him, and not according to the value upon which the premises are taxed (g).

(s) Giles v. Hooper (1691), Carth. 135.

(t) Theed v. Sturkey (1725), 8 Mod. 314. But see Barcroft v. Welland (1883), 12 L. R. Ir. 35.

(u) Rowls v. Gells (1776), Cowp. p. 452, per Lord Mansfield, C.J.

(x) Bute v. Grindall (1786), 1 T. R. p. 343.

(y) See R. v. Hull Dock Co. (1824),

3 B. & C. p. 527.

(z) Mitchell v. Fordham (1827), 6 B. & C. 274. See Brewster v. Kidgell (1698), Carth. 438; 1 Ld. Raym. 317; 2 Salk. 616.

(a) Manning v. Lunn (1845), 2 C. & K. 13. See Christ's Hospital v.

Hurrild (1841), 2 M. & Gr. 707.

(b) See Palmer v. Eurith (1845), 14 M. & W. at p. 430.

(c) Palmer v. Earith (1845), 14

M. & W. 428.
(d) Baker v. Greenhill (1842), 3

Q. B. 148.

(e) Bedford Union v. Bedford Improvement Commissioners (1852), 7 Ex. 777, per Alderson, B., p. 779.

(f) Rey. v. Aylesbury (1846), 9 Q. B. 261.

(g) Yaw v. Leman (1743), 1 Wils. 21; Whitfield v. Brandwood (1818), 2 Stark. 440. See Ward v. Const (1830), 10 B. & C. 635. AGREEMENT to demise a farm at the yearly rent of 40l. payable quarterly, free of all outgoings. The landlord is entitled to a net rent payable free of land tax (h).

COVENANT, by lessor, to pay all taxes now chargeable on the demised premises, and by lessee to pay all fresh taxes which shall hereafter be charged on the premises. The lessor must pay the taxes chargeable on the premises at the time of making the lease, but the lessee must pay all fresh taxes, and also all such additions to the amount of the taxes formerly chargeable as are occasioned by the improved value of the premises (i).

Rates and assessments

It seems reasonable and fair as between landlord and tenant, and it is conceived that the authorities warrant the proposition, that, $prim\hat{a}$ facie, a covenant which merely throws rates (k) and assessments, with or without the addition of taxes, upon the tenant should be construed as imposing upon him the burden of paying all assessments (l) of a temporary or recurring nature, but leaving the landlord liable for assessments made for the permanent improvement of the demised premises (m).

"Duties,"
"impositions,"
"charges,'
"outgoings."

But the covenant will have a wider scope if it comprises such words as "duties," "impositions," "charges," or "outgoings"; and, where any of those words occur in the covenant, it will or may throw upon the lessee the cost of executing even permanent improvements. Landlords always endeavour to extend the liability of the tenants by putting in additional words, and in this they generally succeed, for tenants have not the same persistency (n). The modern cases show two streams of authorities, one beginning with Tidswell v. Whitworth (o), the

(h) Parish v. Sleeman (1860), 1 De G. F. & J. 326. Cf. Smith v. Humble (1854), 15 C. B. 321; Hyde v. Hill (1789), 3 T. R. 377.

(i) Watson v. Atkins (1820), 3 B. & A. 647. See Graham v. Wade (1812), 16 East, 29; Watson v. Home

(1827), 7 B. & C. 285.

(k) A water rate may be within the covenant: Direct Spanish Telegraph Co. v. Shepherd (1884), 13 Q. B. D. 202. Cf. Badcock v. Hunt (1888), 22 Q. B. D. 145. But a covenant by the lessor to pay the water rate will not extend to water supplied for trade purposes: Floyd v. Lyons & Co., [1897] 1 Ch. 633.

(l) A covenant by the lessee to pay rates imposed on the premises is not confined to rates payable by the landlord, and the covenant is broken by non-payment of poor-rate: Hurst v. Hurst (1849), 4 Ex. 571. As to the effect of a statute throwing upon the owner the rates of a house occupied by an ambassador, see Parkinson v. Potter (1885), 16 Q. B. D. 152.

(m) See, for instance, Aldridge v. Ferne (1886), 17 Q. B. D. at p. 214.

(n) Per Bramwell, L.J., in Budd v. Marshall (1880), 5 C. P. D. at p. 487.

(o) (1867), L. R. 2 C. P. 326.

other with Thompson v. Lapworth (p), the courses of which are indicated in the first and second parts of the following Table. It will be observed that the stronger current has for a good many years been, and still is, running in favour of the landlords, and not in favour of restricting the meaning of covenants of the class now under consideration (q).

TABLE OF CONSTRUCTION CASES.

PART I.

Wording of Tenant's Covenant.

To pay "all taxes, rates, assessments, and impositions whatsoever (except property or income tax in respect of the said rent) which ... during the said term shall become payable in respect of the demised premises" (r).

To pay the "rates and assessments which, whether parliamentary, parochial, or otherwise, now are or at any time during the said term shall be taxed, rated, charged, assessed, or imposed upon the said Construction of Covenant.

Tenant not liable to pay sewering and paving expenses imposed upon, and charged by the Manchester Corporation against, the landlord by and under a local Act. In view of the context, the word "impositions" not to be taken in the widest sense, but to be limited to impositions in the action of taxes, rates, or assessments, and so not including a payment in the action of or penalty for non-performance by the landlord of a duty cast upon him by the Act.

Tenant (of house in a new street) not liable to repay to landlord the amount of paving expenses apportioned to the demised house under the Metropolis Management Acts, 1855 and 1862, and charged or

(r) Tidswell v. Whitworth (1867), L. R. 2 C. P. 326, 335, 337; distinguishing Sweet v. Seager (1857), 2 C. B. N. S. 119, and other previous authorities. See, too, Lyon v. Greenhow (1892), 8 T. L. R. 457, and Home and Colonial Stores v. Todd (1891), 63 L. T. 829.

⁽p) (1868), L. R. 3 C. P. 149.
(q) See per Romer and Mathew,
L.JJ., in Foulger v. Arding, [1902]
1 K. B. at pp. 709, 711.

demised premises or any part thereof, or upon or payable by the occupier or tenant in respect thereof (except the property or income tax)" (s).

To pay "all rates, taxes, and assessments payable in respect of the premises during the term" (u).

To pay "all rates, taxes, and assessments whatsoever which now are or during the term shall be imposed or assessed upon the premises, or the landlords or tenants in respect thereof, by authority of Parliament or otherwise, except the landlord's property tax"(x).

imposed by the Acts on the owner (t), and paid by him.

Tenant not liable to pay a sum assessed by the local vestry, under the above Metropolis Management Acts, upon the owners, as their apportioned amount of the expenses of paving the street on which the demised premises abutted; the words used applying to rates and assessments of a temporary or recurring nature, and not to a sum which was a charge upon the property giving it an increased permanent value.

Tenant (of premises outside the metropolis) not liable to pay paving expenses recovered in a summary manner from the owner under sect. 150 of the Public Health Act, 1875.

PART II.

To pay "all taxes, rates, duties, and assessments what-

(s) Allum v. Dickinson (1882), 9 Q. B. D. 632, C. A. See, too, Bird v. Elwes (1868), L. R. 3 Ex. 225; Hill v. Edward (1885), C. & E. 481; and cf. Skinner v. Hunt (1904), W. N. 117; 90 L. T. 430.

(t) As to who is the "owner" within the definition contained in sect. 250 of the Metrop. Management Act, 1855, see London County Council.

v. Wandsworth Borough Council, [1903] 1 K. B. 797, and Driscoll v. Battersea Borough Council, ib. 881.

Tenant liable to pay paving expenses charged by vestry

(u) Wilkinson v. Collyer (1884), 13 Q. B. D. 1, 5, also p. 8 (as to the meaning and intention of the parties).

(x) Bayliss v. Jiggens, [1898] 2 Q. B. 315; followed in Lumby v. Faupel (1903), 88 L. T. 562, affd. 90 ib. 140. See, too, the dictum of Lindley, J., that "the expense of paving, &c., can hardly be said to be a rate, tax, or assessment," in Hartley v. Hudson (1879), 4 C. P. D. at p. 368. soever, which during the continuance of this demise shall be taxed, assessed, or imposed on the tenant or landlord of the premises hereby demised in respect thereof." (y).

To pay all "taxes, rates, duties, and assessments, whether parliamentary, parochial, or otherwise, which . . . during the said term shall be taxed, charged, rated, assessed, or imposed on the said premises or any part thereof, or upon the landlord or tenant in respect thereof" (z).

To pay "the land tax, sewers rate, and all other taxes, rates, duties, assessments, and impositions, parliamentary, parochial, or otherwise, which are now or shall at any time during the demise be assessed or imposed on or in respect of the said demised premises or of the rent hereby reserved (landlord's property tax only excepted)" (a).

To pay "all taxes, rates, duties, and assessments whatsoever, which now are, or hereafter shall become, payable for or in respect of the premises hereby demised, or any part

(y) Thompson v. Lapworth (1868), L. R. 3 C. P. 149, 157, distinguishing Tidswell v. Whitworth (1867), L. R. 2 C. P. 326. Consider Weld v. Clayton-le-Moors Urban Council (1902), 86 L. T. 584, and Clayton v. Smith (1895), 11 T. L. R. 374 (drainage). See, too, Payne v. Burridge (1844), 12 M. & W. 727.

against landlord under Metropolis Management Acts, the
amount charged being a "duty"
in the sense of a money payment imposed on the landlord in respect of the demised
premises.

Tenant liable to repay to the landlord the expense of making good defective drainage on the requirement of the local sanitary authority under the Public Health Act, 1875, the expense being a "duty" in the abovementioned sense.

Tenant liable to pay drainage expenses incurred by landlady in complying with requirement of vestry under the Public Health (London) Act, 1891. The obligation imposed upon the landlady to take up a defective drain and lay a new one was a "duty" imposed on her in respect of the demised premises.

Tenant liable to pay the cost of drainage works required by vestry to be done under sect. 85 of the Metropolis Management Act, 1855. A "duty payable" means a sum of money

(a) Brett v. Rogers, [1897] 1 Q. B. 525, 528.

⁽z) Budd v. Marshall (1880), 5 C. P. D. 481, C. A., the majority of the L.JJ. approving Thompson v. Lapworth, supra. See, too, Re Robertson and Thorne (1883), 47 J. P. 566; Antil v. Godwin (1899), 15 T. L. R. 462.

thereof, whether parliamentary, parochial, or otherwise, except the landlord's property tax" (b).

To pay "all taxes, rates, including sewers, main drainage assessments, and impositions whatsoever, which now are, or which at any time or times hereafter during the continuance of the said term hereby granted may be, taxed, rated, assessed, charged, or imposed upon or in respect of the said premises, or any part thereof, on the landlord, tenant, or occupier of the same premises by authority of Parliament or otherwise howsoever (landlord's property tax and tithe only excepted) "(c).

To pay "all rates, taxes, assessments, and impositions whatsoever, whether parliamentary, parochial, or otherwise, that may become due or assessed in respect of the messuage premises and garden during the tenancy (property tax only excepted as aforesaid)" (d).

To pay "the sewers rate and all other taxes, rates, charges,

(b) Farlow v. Stevenson (C. A.), [1900] 1 Ch. 128, 139; approving Brett v. Rogers, [1897] 1 Q. B. 525.

payable in respect of a duty.

Tenant liable to pay expense of removing a privy and constructing a new water-closet, pursuant to notice given to landlord by district sanitary authority under the Public Health (London) Act, 1891. The word "imposition" is, if anything, rather larger than "duty," and is large enough to cover the obligation here; and nothing in the previous authorities debars the Court from giving its natural meaning to the word.

Tenant (of house for three years at yearly rent of 54l.) liable to bear expense of reconstructing drains, on requirement of sanitary authority under above Act of 1891; the duty of complying with the requirement being an "imposition" within the covenant, notwithstanding the absence from it of any such words as "imposed on the landlord or tenant," and notwithstanding the shortness of the term.

Tenant liable to pay expense of making good a defective drain

Foulger v. Arden, supra, has been followed in Goldstein v. Hollingsworth, [1904] 2 K. B. 578; 20 T. L. R. 550, and in Morris v. Beal, [1904] 2 K. B. 585; 20 T. L. R. 682.

(d) Re Warriner, Brayshaw v. Ninnis, [1903] 2 Ch. 367, applying Foulger v. Arding, supra, and Stockdale v. Ascherbery, in fra, p. 394.

⁽c) Foulger v. Arding (C. A.), [1902] 1 K. B. 700, 707, 710, reversing S. C., [1901] 2 K. B. 151. Cf. Lumby v. Faupel (1903), 88 L. T. at p. 564. See, too, Shephard v. Barber (1903), 67 J. P. 238; 1 L. G. R. 157.

and assessments whatsoever, parliamentary, parochial, or otherwise, which now are or hereafter shall be imposed, charged, or assessed upon or in respect of the premises, or payable by either the owner or occupier in respect of the same, the landlord's property tax only excepted "(e).

To pay "all existing and future taxes, rates, assessments, land tax, tithe, or tithe rentcharge; and outgoings of every description for the time being payable either by the landlord or tenant in respect of the said premises " (f).

To pay "all rates, taxes, assessments, and outgoings of every description payable in respect of the said premises during the tenancy, except the landlord's property tax" (g).

in compliance with notice given by local authority under Public Health Act, 1875, s. 94; "charges . . . imposed" being equivalent to "impositions . . . charged" (Foulger Arding, supra, p. 392).

Tenant (of house in a new street) liable to repay to landlord a sum which the latter had been compelled by the local vestry to pay towards the cost of paving the street; the word "outgoings" being at least as strong as "duties," and the payment having been a "future . . . outgoing."

Tenant (of cottage from year to year at yearly rent of 201.) held (i) liable to pay, as an "outgoing," the expenses of providing a supply of water to a w.c. required by a sanitary authority under the Public Health (London) Act, 1891, but (ii) not liable to pay for paving a back-yard and laying down new drains, those not being "outgoings" within the reasonable contemplation of the parties to the covenant.

Economic Printing Co. (1898), 79 L. T. 420; Tubbs v. Wynne, [1897] 1 Q. B. 74; Jackson v. Ross, [1898] 2 I. R. 65 (between vendor and purchaser); Glasgow Corporation v. Glasgow Tramway Co., [1898] A. C. 631 ("free from all expenses"); and distinguish Surtees v. Woodhouse, [1903] 1 K. B. 396, cited infra, pp. 395, 396.

Briggs (1878), 3 C. P. D. 368. (f) Aldridge v. Ferne (1886), 17 Q. B. D. 212, 214. See, too, Crosse v. Raw (1874), L. R. 9 Ex. 209; Gardner v. Furness Ry. Co. (1883), 47 J. P. 232; Re Bettingham (1892),

(e) George v. Coates (C. A.) (1903),

overrules, it is conceived, Rawlins v.

This case in effect

88 L. T. 48.

9 T. L. R. 48; Waller v. Andrews (1838), 3 M. & W. 312; Arding v.

(g) Valpy v. St. Leonards Wharf Co. (1903), 67 J. P. 432; 1 L. G. R. 305. To pay "all taxes, rates, assessments, and outgoings of every description for the time being payable in respect of the premises as they become due, landlord's property tax only excepted" (h).

To pay "all present and future rates, taxes, assessments, and outgoings whatsoever in respect of the said premises, whether payable by the landlord or tenant (except landlord's property tax)"(i).

Tenant (of house for three years at yearly rent of 55l.) liable to pay expense of reconstruction of defective drain required by sanitary authority under Public Health Act, 1875, the language of the covenant being clear, and this being an "outgoing" which the parties might not unreasonably be supposed to have contemplated as likely to be required, regard being had to the condition of the premises when demised.

Tenant (continuing in occupation from year to year of house originally leased for three years at yearly rent of 70l.) not liable to pay, as an "outgoing," the expense of reconstructing a defective drain, it presumably not having been intended that an agreement to bear such an expense should be part of the terms of his holding over.

Present state of the authorities.

It is apparent from the foregoing Table that the distinctions taken in cases on this subject run extremely fine, and indeed it may very well be admitted that the authorities are not even now in a satisfactory condition. It is, however, clear that, where there is a defect in the nature of demised premises which exists at the time of the demise, and is the subject-matter of an obligation imposed by statute on the landlord, the burden of that obligation may, nevertheless, by a covenant of the kind just discussed, be thrown upon the tenant. It is also clear from the authorities that a covenant of this kind may, if it contains

(i) Harris v. Hickman, [1904] 1 K. B. 13. In this case it was also held that, the landlords having done the work of reconstruction voluntarily, i.e., before service of any notice by the sanitary authority requiring them to do it, the expense of doing it was not an outgoing within the meaning of the covenant.

⁽h) Stockdale v. Ascherberg, [1903] 1 K. B. 873, 877, affd. [1904] 1 K. B. 447. Cf. Re Warriner, [1903] 2 Ch. 367, and Batchelor v. Bigger (1889), 60 L. T. 416.

appropriate words, be construed as being directed, not only to recurring charges such as rates and taxes, but also to charges in the nature of capital expenditure incurred once for all, such as charges in respect of structural work. Still, underlying the whole matter is the consideration that the covenant in all such cases is part of a contract of demise between landlord and tenant, and it must, accordingly, be assumed to relate only to matters which may reasonably be supposed to have been contemplated by the parties as being within the purview of such a contract (k). Such an extreme case, for instance, as that of an obligation to pull down and rebuild the demised premises is so far outside of anything that can be conceived of as being within the contemplation of the parties that it would necessarily be excluded from the meaning of words which might otherwise have been wide enough to include it (1).

Where the covenant binds the tenant to pay rates and assess- "Charged ments "charged upon the premises," he is not liable in respect of upon the a charge which has become effective before the commencement of his tenancy (m), nor unless a charge is actually created, as where expenses for which the owner is liable are incurred by the local authority under the Public Health Act, 1875 (n). Expenses incurred under the Metropolis Management Acts, or under the Public Health (London) Act, 1891, are not a charge upon the premises, and, to bring these in, the covenant must extend to assessments "charged upon the lessor" (o) in respect of the premises.

Where a lessee had covenanted to pay "all present and future "Present and rates, taxes, duties, assessments, and outgoings charged upon the future rates." said premises or the owner or occupier in respect thereof," it was held that the covenant did not throw upon the lessee the expense of works under the Private Street Works Act, 1892, which, upon

(k) See Valpy v. St. Leonards Wharf Co. (1903), 67 J. P. 402, cited

supra, p. 393.

(1) See per Collins, M.R., and Romer, L.J., in Foulger v. Arding, [1902] 1 K. B. at pp. 704, 706, 709, and 710.

(m) Surtees v. Woodhouse, [1903] 1 K. B. 396. Expenses incurred by a local authority under the Public Health Act, 1875, s. 150, first become "a charge on the premises in respect of which they were incurred"

(sect. 257) upon and as from the date of completion of the works: Re Allen and Driscoll, [1904] 1 Ch. 493; 2 Ch. 226.

(n) Sect. 257: Hartley v. Hudson (1879), 4 C. P. D. 367. But service of notice of apportionment creates a charge, so as to make the tenant liable under the covenant, although the works are not executed till after the tenancy has determined: Wix v. Rutson, [1899] 1 Q. B. 474.

(v) Smith v. Robinson, [1893] 2 Q. B. 53.

their completion, had become a charge upon the premises before the commencement of the tenancy, but was not payable until after that date. The sum in question was admitted to be an "outgoing" within the covenant; but, under the above-stated circumstances, the words "and future" did not operate to make the lessee liable, those words being put in to cover rates, &c., of a kind not existing at the date of the lease (p).

Demand of rates, &c., by collector.

If a lessee covenants to pay rates and taxes, it appears that no demand by the collector is necessary to constitute a breach of the covenant so as to entitle the lessor to avail himself of a proviso for re-entry (q); where a rate is duly made and published, it is the duty of the parties assessed to seek out the collector and pay it (r). Where the landlord is suing the tenant for taxes due by statute from the landlord which the tenant has engaged to pay, he should claim specially under the agreement (s).

Factory and Workshop Act, 1891, s. 7.

There is a rather remarkable provision in the seventh section of the Factory and Workshop Act, 1891 (54 & 55 Vict. c. 75), which may be noticed here. That section imposes on district sanitary authorities, in certain cases, the duty of serving upon a factory owner a notice, requiring him to carry out measures for providing means of escape from fire; and "if the owner alleges that the occupier of the factory ought to bear or contribute to the expenses of complying with the requirement, he may apply to the county court having jurisdiction where the factory is situate, and thereupon the county court, after hearing the occupier, may make such order as appears to the court just and equitable under all the circumstances of the case." Under this enactment the county court Judge has jurisdiction, even where there is a covenant binding the lessee of a factory to pay, for instance, all charges and outgoings which may be charged or imposed on the lessor in respect of the premises, to make an order dividing the above expenses between the parties, unless, indeed, the terms of the contract between them (which the Judge is bound to take into consideration) are such as to make it unjust and inequitable to do so (t).

⁽p) Surtees v. Woodhouse, [1903] 1 K. B. 396, 400, 403; followed by the C. A. in Lumby v. Faupel (1903), 88 L. T. 563, affd. 90 L. T. 140 (a case of paving expenses under the Public Health Act, 1875).

⁽q) Davis **v.** Burrell (1851), 10 C. B. 821.

⁽r) Per Jervis, C.J., 10 C. B. p. 826.

⁽s) Spencer v. Parry (1835), 3 A. & E. 331.

⁽t) Monk v. Arnold, [1902] 1 K. B. 761, 765, 767. Distinguish Goldstein v. Hollingsworth, [1904] 2 K. B. 578, a case under the Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), s. 101; and cf. Arding v. Economic Printing Co. (1898), 79 L. T. 420, 622.

SECT. X.—QUIET ENJOYMENT.

				PAGE
(1)	Where there is no express agreement	•		. 397
` ,	Implied contract for quiet enjoyment		•	. 397
	Implied covenant excluded by express covenant	•		. 398
	Breach of implied covenant		•	. 399
(2)	Where there is an express agreement	•		. 399
•	Construction of general covenant for quiet enjoyment.		•	. 399
	,, usual restricted covenant for quiet enjoy		ent	. 400
	Breach of express covenant	•	•	. 400
	Right to sue where entry cannot be made	•		. 403
	Construction of some covenants for quiet enjoyment.		•	. 404
	Damages for breach of covenant for quiet enjoyment			. 405

(1) WHERE THERE IS NO EXPRESS AGREEMENT.

Upon a parol demise of a tenement there has, in several cases, Implied conbeen held to be implied a contract for quiet enjoyment, though enjoyment. not for title (u). So where, by a memorandum not under seal, A. "agreed to let," and B. agreed to take, a furnished house for a year, but there was no express contract for quiet enjoyment, it was held that such a contract was to be implied from the mere relationship of landlord and tenant (x). A lease by deed in which the word "demise" is used raises the implication of a covenant both for quiet enjoyment and also for title (y), for the word "demise" imports a covenant in law on the part of the lessor that he has good title, and that the lessee shall quietly enjoy during the term (y). Before the Judicature Act of 1873 came into operation, no such implication arose upon a mere agreement for a future demise (z); but at the present day such an implication may, it is conceived, arise in the case of an agreement for a lease to which the doctrine of Walsh v. Lonsdale (a) applies.

(u) Bandy ∇ . Cartwright (1853), 8 Ex. 913; Hall v. City of London Brewery Co. (1862), 2 B. & S. 737; Robinson v. Kilvert (1889), 41 Ch. D. 88; Houre \forall . Chambers (1895), 11 T. L. R. 185. See Granger v. Collins (1840), 6 M. & W. 458; Messent v. Reynolds (1846), 3 C. B. 194.

(x) Budd-Scott ∇ . Daniell, [1902] 2 K. B. 351, 358; in which case a dictum to the contrary of Kay, L.J. (in Baynes & Co. v. Lloyd and Sons, [1895] 2 Q.B. at p. 615), was dissented from. See, however, the observations of Collins, M.R., in Jones v. Lavington, [1903] 1 K. B. at pp. 256,

257.

(y) Per Littledale, J., in Burnett v. Lynch (1826), 5 B. & C. at p. 609; Iggulden v. May (1864), 9 Ves. at p. 330; Mostyn v. West Mostyn Coal Co. (1876), 1 C. P. D. 145. It has been judicially suggested that a covenant for quiet enjoyment may be implied from any word or words of like import with "demise" (Budd-Scott v. Daniell, [1902] 2 K. B. at p. 359).

(z) Brashier v. Jackson (1840), 6

M. & W. 549, at p. 557. (a) (1882), 21 Ch. D. 9. See supra, p. 81.

Cessation of implied covenant.

But this implied covenant for quiet enjoyment ceases with the estate of the lessor; hence if, under a lease made by a tenant for life (not containing any express covenant for quiet enjoyment), the lessee is evicted by the remainderman after the death of the lessor, the lessee cannot maintain an action upon an implied covenant for quiet enjoyment against the executor of the tenant for life (b); and the rule is the same where a lessee for years sublets for a longer period than the unexpired residue of his term (c).

Implication from the word "let."

Further, whether any contract is or is not to be implied from the use of the word "let"—a matter which cannot, it is conceived, be regarded as settled (d), notwithstanding the decisions referred to in the first two sentences of this section—there certainly is not to be implied out of that word an unlimited covenant or contract for quiet enjoyment, which would cover lawful interruption by a person claiming under a permanent title (e).

Failure to get possession.

A person who lets premises agrees to give possession, and not merely to give a chance of a lawsuit (f). If he does not give possession, the lessee may recover damages against him, and is not obliged to bring ejectment against an occupier who wrongfully refuses to quit (g).

Distress by superior landlord. One of the consequences of an implied agreement on the part of a landlord for his tenant's quiet enjoyment is that the landlord, if himself a lessee, ought, by paying over to the superior landlord the rent received from the undertenant or otherwise, to protect the undertenant from the superior landlord's distress (h).

Implied covenant excluded by express covenant.

The covenant implied in the word "demise" will be qualified and restrained by an express covenant for quiet enjoyment (i). Hence the lessee, upon an eviction by a paramount title, cannot recover under the implied covenant, if the lease contains an express

(b) Adams v. Gibney (1830), 6 Bing. 656; Penfold v. Abbot (1862), 32 L. J. Q. B. 67; Schwartz v. Locket (1889), 61 L. T. 719.

(c) Baynes & Co. v. Lloyd and Sons, [1895] 1 Q. B. 820; 2 Q. B. 610.

(d) See per Collins, M.R., in *Jones* v. *Lavington*, [1903] 1 K. B. 253, at p. 257.

(e) Jones v. Larington, supra. (f) Judgment in Coe v. Clay

(1829), 5 Bing. 440.

(y) Coe v. Clay, supra; Jinks v. Ldwards (1856), 11 Ex. 775. Distinguish Drury v. Macnamara (1855),

5 E. & B. 612, where there was merely an agreement to let, and it was held that there was no contract by the defendant to give possession. The doctrine of Walsh v. Lonsdale ((1882) 21 Ch. D. 9) does not apply. it is conceived, to a case where the tenant has not obtained possession.

(h) Hancock v. Caffyn (1832), 8 Bing. at p. 366. See Upton v. Feryusson (1833), 3 Moo. & Sc. 88.

(i) Line v. Stephenson (1838), 4 Bing. N. C. 678; 5 Bing. N. C. 183; Grosvenor Hotel Co. v. Hamilton, [1894] 2 Q. B. 836. covenant for quiet enjoyment against the lessor and those who claim under him (k). Where the implied covenant was not available, the want of it was, under special circumstances, supplied by the principle that the lessor may not derogate from his grant (l).

Save as against the lessor, the implied covenant protects the Breach of lessee only against lawful disturbance (m). For tortious acts the covenant. lessee has his proper remedy against the wrongdoers (n). against the lessor himself, however, the lessee can sue on the implied covenant whether the lessor's entry be lawful or no (o). The implied covenant for quiet enjoyment does not prevent the ordinary user of adjoining premises of the lessor, unless it was known to the lessor at the time of letting that such user would be detrimental to the purpose for which the premises were let (p).

(2) WHERE THERE IS AN EXPRESS AGREEMENT.

A general covenant for quiet enjoyment extends only to the acts Construction of persons claiming under a lawful title (q); for the law will never adjudge that a lessor covenants against the wrongful acts of quiet enjoystrangers, except his covenant is express to that purpose (r). The construction, however, is different where an individual is named; for there the covenantor is presumed to know the person against whose acts he is content to covenant, and may therefore be reasonably expected to stipulate against any disturbance from him, whether by lawful title or otherwise (s). And the covenant extends to all acts of the lessor, even though it in terms refers only to his lawful acts, for as against the party himself the Court will not consider the word "lawful," or drive the lessee to his action of trespass (t). If the covenant has been entered into, no

of general covenant for

- (k) Nokes's Case (1599), 4 Rep. 80 b; Merrill v. Frame (1812), 4 Taunt. 329.
- (1) Grosvenor Hotel Co. v. Hamilton, supra.
- (m) Wallis v. Hands, [1893] 2 Ch. p. 83. Cf. Granger ∇ . Collins (1840), 6 M. & W. 458.
- (n) Hayes v. Bickerstaff (1669), Vaughan, 118.
- (v) Andrews' Case (1591), Cro. Eliz. 214.
- (p) Robinson v. Kilvert (1889), 41 Ch. D. 88.
- (y) Dudley v. Folliott (1790), 3 T. R. 584.
- (r) Tisdale v. Essex (1614), Hob. 34; Hayes ∇ . Bickerstaff (1669), Vaughan, 118; Foster v. Pierson (1792), 4 T. R. 617. See Chaplain v. Southgate (1717), 10 Mod. 384; Wotton v. Hele (1669), 2 Wms. Saund. 178, note (3).

(s) Foster v. Mapes (1591), Cro. Eliz. 212; judgment of Lord Ellenborough, C.J., in Nash v. Palmer (1816), 5 M. & S. at p. 380; Fowle v. Welsh (1822), 1 B. & C. 29.

(t) Crosse v. Young (1684), 2 Show. 425, 427; Corus v. Anon (1597), Cro. Eliz. 544. See Lloyd v. Tomkies (1787), 1 T. R. 671.

interruption by the lessor is permissible, although the act would otherwise be lawful (u).

Where an agreement for a lease contained an agreement for an absolute covenant for quiet enjoyment, it was held that the lessee was entitled to a lease according to the contract with an unqualified covenant, notwithstanding that the lessor had no title to a part of the premises (x). In conveyances on sale an unqualified covenant for quiet enjoyment will not be restricted because it is associated with covenants for title which are qualified (y), provided it is not by the context rendered subject to the qualifying words (z). But a covenant for quiet enjoyment in a lease, which in terms extends to acts of all the world, may be cut down by further specification of the acts against which protection is given (a).

Usual restricted covenant.

In practice the covenant is usually expressly restricted to the acts of the lessor or persons lawfully claiming through or under him (b), and it applies therefore only to acts of a person claiming through or under the lessor which such person is entitled to do (c).

Effect of covenant.

The covenant does not enlarge what is previously granted, but gives an additional remedy if the lessee cannot get, or is deprived of, that which has previously been professed to be granted (d).

What constitutes a breach.

It is in every case a question of fact whether the quiet enjoyment of the land has or has not been interrupted (e); and where the ordinary and lawful enjoyment of the demised land is substantially and directly interfered with by the acts of the lessor, or those lawfully claiming under him (f), the covenant is broken,

(u) Andrews v. Paradise (1725), 8 Mod. 318.

(x) Onions v. Cohen (1865), 2 Hem. & M. 354.

(y) Howell v. Richards (1809), 11 East, 633.

(z) Smith v. Compton (1832), 3 B. & Ad. 189. See Barton v. Fitzyerald (1812), 15 East, 530; Young v. Raincock (1849), 7 C. B. 310.

(a) Nind v. Marshall (1819), 1 Br. & B. 319.

(b) See the forms of covenant in Kelly v. Rogers, [1892] 1 Q. B. 910, and in Cohen v. Tannar, [1900] 2 Q. B. 609.

(c) Sanderson v. Mayor of Berwickon-Tweed (1884), 13 Q. B. D. 547; Jaeger v. Mansions Consolidated (1903), 87 L. T. 690, 693. (d) Leech v. Schweder (1874), L. B. 9 Ch. p. 474; Davis v. Town Properties Investment Corporation, [1903] 1 Ch. at p. 803.

(e) See Allport v. Securities Co., Ltd. (1895), 72 L. T. 533; Budd-Scott v. Daniell, [1902] 2 K. B. 351, 362. For a merely temporary interruption the proper remedy is in damages, and an injunction will not be granted: Leader v. Moody (1875). L. R. 20 Eq. 145. As to pleading a breach by eviction, see Brookes v. Humphreys (1838), 5 Bing. N. C. 55.

(f) That is, claiming under him the right to do the acts which caused the interruption; per Lord Esher, M.R., in Harrison, Ainslie & Co. v. Muncaster, [1891] 2 Q. B. p. 685.

although neither the title to the land nor the possession of the land may be otherwise affected (g). This enlarges the older rule (h), according to which the covenant was a covenant to secure title and possession (i). But where the act complained of does not amount to a direct interference with the lessee's enjoyment, it is at least doubtful whether it will be held to constitute a breach of the lessor's covenant (k). And even if the act would ordinarily be a breach of the covenant, it may be excused by circumstances existing at the date of the lease and known to both. parties which show that the right alleged to have been interfered with was not intended to pass by the demise (l). For instance, the lessee of a house and garden forming part of a large area of building ground may not be entitled under this covenant to restrain the lessor, or persons claiming under him, from building on the adjoining land so as to obstruct the free access of light and air to the garden (m).

It must be borne in mind that a covenant of this kind is to be construed with regard had to the circumstances which existed at the date of the lease; so that the assignees of the reversion cannot be held liable for acts lawfully done under an independent title created subsequently to the lease. So far as the covenant is personal or collateral, it does not run with the land (n).

The interruption may be the result of acts done off the Acts off the demised premises (o). But there must be a disturbance of premises. the occupation by physical interference of some kind or other, as distinguished from disturbance of comfortable enjoyment by noise or the like. The disturbance must be of a physical and not of a metaphysical nature (p). For an interference

(g) See Sanderson v. Mayor of Berwick-on-Tweed (1884), 13 Q. B. D. p. 551; M. S. & L. Ry. Co. v. Anderson, [1898] 2 Ch. 394.

(h) See per Lindley, L.J., in Robinson v. Kilvert (1889), 41 Ch. D.

(i) Dennett ∇ . Atherton (1872), L. R. 7 Q. B. 316.

(k) See per Romer and Cozens-Hardy, L.JJ., in Davis v. Town Properties Investment Corporation, [1903] 1 Ch. 797, at p. 805, doubting the correctness of the decision in Tebb v. Cave ([1900] 1 Ch. 642), where Buckley, J., held that the owner of two adjoining pieces of land, who, after leasing one of the pieces with a house upon it to A., erected loftier buildings upon the other piece, with the result that A.'s chimney smoked, had broken his covenant in A.'s lease for quiet enjoyment.

(l) Robson v. Palace Chambers Co.

(1897), 14 T. L. R. 56.

(m) Potts v. Smith (1868), L. R. 6 Eq. 311.

- (n) Davis v. Town Properties, &c., Corporation, supra, affirming [1902] 2 Ch. 635.
- (v) Shaw \forall . Stenton (1858), 2 H. & N. 858.
- (p) Jaeger v. Mansions Consolidated (1903), 87 L. T. 690, at p. 692.

arising by noise or the like the remedy is in respect of the nuisance (q).

Establishment of right of common.

A decree in equity which subjected land to a general right of common, but which was not followed by any entry or actual disturbance, was held not to be a breach of the covenant (r).

Damage must be foreseen.

The covenant does not protect the lessee against damage which could not with reasonable care have been foreseen to be the consequence of the acts complained of. An interruption under such a covenant is not caused by the lessor or those claiming under him, unless it is either a direct act of interruption, or unless it is some act of which it either was foreseen, or ought by reasonable care to have been foreseen, that the consequence in the particular case would be the interruption (s). Hence a disturbance of the working of a mine resulting from an unforeseen inrush of water into an adjoining mine held under the same lessor was held to constitute no breach of covenant (t).

Breach must be subsequent to lease.

Moreover the act, whether of commission or of omission, must be subsequent to the granting of the lease (u); but where the act is done by a stranger under the authority of the lessor, it is sufficient that it is done during the enjoyment of the lessee, and a breach of covenant is committed notwithstanding that the authority was given before the lease (u).

Breach must be by positive act.

And the interruption must be the act of some person to whom the covenant extends. Hence, under the usual form of covenant, it is no breach by a covenanting sublessor, if the headlessor recovers possession in consequence of non-payment of rent by the sublessor (x); or if the demised premises are distrained upon for arrears of land tax due from the lessor (y); or if the possession of the sublessee is interfered with by the headlessor for non-observance by the sublessee of a covenant in the headlesse of which the sublessor omitted to inform him (z).

But where a sublessor broke a covenant in the headlesse

(q) Jenkins v. Jackson (1888), 40 Ch. D. 71.

(r) Howard v. Maitland (1883), 11

Q. B. D. 695.

(s) Per Bowen, L.J., in Harrison, Ainslie & Co. v. Muncaster, [1891] 2 Q. B. 680, at p. 689. Whether, however, the L.J. meant to put that forward as a correct definition of an interruption, quære: Kelly v. Rogers, C. A., [1892] 1 Q. B. 910, at p. 913.

(t) Harrison, Ainslie & Co. v.

Muncaster, supra.

(u) Anderson v. Oppenheimer (1880), 5 Q. B. D. 602. See Blatchford v. Mayor of Plymouth (1837), 3 Bing. N. C. 691.

(x) Kelly v. Rogers, supra; notwithstanding Stevenson v. Powell (1612), 1 Bulst. 182.

(y) Stanley v. Hayes (1842), 3 Q. B. 105. (z) Spencer v. Marriott (1823), 1 B. & C. 457; infra, p. 404; Dennett v. Atherton (1872), L. B. 7 Q. B. 316.

against assignment, and afterwards the reversion was assigned, and the assignees of the reversion brought an action against the sublessor for recovery of possession, to which action he had a good defence on the ground that his breach occurred before the assignment of the reversion; it was held that the act of the sublessor, who consented to a judgment for possession under which his sublessee was evicted, was the cause of the interruption of the sublessee's enjoyment, and was, therefore, a breach by the sublessor of his covenant with the sublessee for the latter's quiet enjoyment (a).

When contained in a lease of the exclusive right of shooting Lease of and sporting over a farm, his covenant does not hinder the tenant of the farm from using the land in the ordinary way, or from destroying furze and underwood in the reasonable use of the land as a farm; nor will the lessor be liable for wrongful acts committed by such tenant contrary to the reservation of his landlord (b).

sporting

A covenant, by the lessor, for quiet enjoyment as against any Breach by person claiming by, from or under him, is broken by an eviction of person claiming under the tenant by the lessor's widow entitled under a conveyance lessor. taken by the lessor to the use of himself and his wife (c); also by an eviction by a person claiming under a prior appointment by the covenantor and another person (d); by a remainderman under a settlement made by the lessor before the lease (e); or by a person claiming under a settlement made by the lessor under a power (f).

A covenant for quiet enjoyment contained in a lease of corporate Covenant by property does not prevent the corporation from exercising their statutory rights, such as a right to establish a market (g).

corporation.

It appears to be doubtful whether a lessee, who cannot enter Right to sue because some one else is in possession under a lawful title, can sue his lessor on the covenant for quiet enjoyment (h). Such an made.

where entry cannot be

(a) Cohen v. Tannar, C. A., [1900] 2 Q. B. 609, distinguishing Kelly v. Rogers, supra.

(b) Jeffryes v. Evans (1865), 19 C. B. N. S. 246. See Newton v. Wilmot (1841), 8 M. & W. 711; infra, p. 411.

Cro. Jac. 657.

(d) Calvert **v.** Sebright (1852), 15 Beav. 156.

(e) Hurd v. Fletcher (1778), 1 Doug. 43; Erans v. Vaughan (1825), 4 B. & C. 261.

(f) Carpenter \mathbf{v} . Parker (1857), 3 C. B. N. S. 206.

(g) Spurling ∇ . Bantoft, [1891] 2 Q. B. 384.

(h) At any rate the lessee must wait until he is entitled to possession: Ireland v. Bircham (1835), 2 Bing. N. C. 90.

action has been upheld (i), on the ground that the lessee ought not to be forced to enter and so subject himself to an action by a tortious act (k). On the other hand, it has been suggested that the action will not lie without actual entry and expulsion (l), and that the lessee has a sufficient remedy in his action against the grantor of the term for not putting him into possession (m). But where the lessee was already in possession under a lease well granted, and took a fresh lease in reversion which proved to be invalid, he recovered damages in an action on the covenant for quiet enjoyment contained in the second lease (n).

Construction of some covenants for quiet enjoyment.

The following cases, in addition to those already cited, illustrate the construction of covenants for quiet enjoyment:—

Covenant, by lessor, in an underlease, that lessee shall hold the premises without any lawful eviction, &c., by the lessor, or any persons whomsoever claiming by, from, under or in trust for her, or by or through her acts, means, right, &c. An eviction of the underlessee by the original lessor for a forfeiture incurred by the use of the premises as a shop, contrary to a covenant in the original lease, of which the underlessee had not been informed, is not an eviction by means of the lessor within the meaning of the covenant (o).

Covenants, shall quietly enjoy. The payment of rent is not a condition precedent to the performance of the covenant for quiet enjoyment (p). The lessor's covenant for quiet enjoyment and the lessee's covenants to pay rent and to repair are independent covenants, and, upon default by the lessee, the lessor is not justified in calling upon the lessee's tenants to pay rent to him, the lessor (q).

CLAUSE in a deed whereby the lessor "for himself, his heirs and assigns, the premises unto (the lessee), his executors, administrators and assigns under the rents, covenants, &c., before

(k) Cloake v. Hooper, supra.

C. B. N. S. p. 727.

(n) Lock v. Furze (1866), L. R. 1 C. P. 441.

(a) Spencer v. Marriott (1823), 1 B. & C. 457. See Wandhouse v. Jenkins (1832) 9 Bing. 431.

(p) Dawson v. Dyer (1833), 5 B. & Ad. 584. And see Edge v. Boilean, infra.

(q) Edge v. Boileau (1885), 16 Q. B. D. 117.

⁽i) Cloake v. Hooper (1673), Freem. 122; Ludwell v. Newman (1795), 6 T. R. 458.

⁽l) Holder v. Taylor (1614), Hob. 12. Where the lessee is kept out of possession by the lessor, see Hawkes v. Orton (1836), 5 A. & E. 367.

⁽m) Coe v. Clay (1829), 5 Bing. 440. See Wallis v. Hands, [1893] 2 Ch. p. 85; Smart v. Jones (1864), 15

expressed, against all persons whatsoever lawfully claiming the same, shall and will, during the term, warrant and The clause operates as an express covenant for quiet enjoyment during the whole term granted by the lease (r).

Where the covenant provides that the lessee shall quietly hold and enjoy the premises for and during the said term, the last words must be taken to refer to the term which the lessor assumed to grant by the lease, and not to the term which he actually had power to grant (s).

Upon the breach of a covenant for quiet enjoyment contained Damages for in a lease which turns out to be void, and under which the covenant. lessee has entered, the lessee is entitled to recover the value of the term and the costs of defending an action of ejectment, and also the sum recovered as mesne profits by the plaintiff in such action (t). And in the case referred to above, where a lease in reversion was invalid, the difference in value between the invalid lease and a substituted lease which the lessee accepted from the person entitled to the premises was taken as the test of the amount of damages recoverable against the original lessor (u). If the lessee has to remove to other premises in consequence of interference by the lessor, the damages will not be confined to the value of the term, but will include all loss naturally resulting, such as the expense to the lessee of removing his business (x).

SECT. XI.—LIVE STOCK (y).

Upon a lease of a stock of live cattle, the lessee is entitled, Rights and in the absence of special stipulation, to the use and profits of lessee and them during the term; and the lessor has only a possibility lessor. of property in case the cattle all outlive the term (z). If any of the cattle die during the term, the property in them rests

- (r) Williams ∇ . Burrell (1845), 1 C. B. 402.
- (*) Evans v. Vaughan (1825), 4 B. & C. 261, 268.
- (t) Williams v. Burrell (1845), 1 C. B. 402; Rolph v. Crouch (1867), L. R. 3 Ex. 44. Where the interruption does not amount to the loss of the term, there is a continuing cause of action, and the damages are assessed down to the time of assessment: R. S. C. Ord. 36, r. 58. See
- Hole v. Chard Union, [1894] I Ch. 293; Child v. Stenning (1879), 11 Ch. D. 82.
- (u) Lock v. Furze (1866), L. R. 1 C. P. 441. See Jones v. Hawkins (1886), 3 T. L. R. 59; Sutton v. Baillie (1891), 65 L. T. 528.
- (x) Grosvenor Hotel Co. v. Hamilton, [1894] 2 Q. B. 836.
 - (y) See article in 23 Sol. Journ. 208.
 - (z) Bac. Abr. (A.) 639.

absolutely in the lessee, and the lessor cannot claim to have them replaced after the term; hence he has no reversion to grant over to another, either during the term or after, until the lessee has redelivered the cattle to him (a). All the young produced by the cattle during the term belong to the lessee, but he cannot kill or dispose during the term of the cattle originally leased without being subject to an action of trespass (a).

Sometimes, however, provision is made for keeping up the flock or herd at the expense either of the lessor (b) or of the lessee (c), and for the redelivery of the whole upon the determination of the tenancy, or payment of compensation (c).

A covenant by the lessee of sheep or cattle, on behalf of himself and his assigns, at the end of the lease to deliver sheep or cattle of the same value as those let to him, or to pay a certain price, is a personal contract only, and will not bind a person to whom the lessee has assigned the sheep or cattle (d).

In a lease of cows by the tenant of a farm to a dairyman, the terms may be that the dairyman shall pay so much a year for each cow, and in return take the milk and the calves, look after the cattle, and have certain rights of using the farm for this purpose. The owner of the cattle undertakes to support and maintain them, and it is stipulated that they shall have at certain times the exclusive pasture of certain specified fields (e). Where the agreement gave the lessee the right of pasturing the cattle on lands described as "summerleazes" and "after grass," evidence was admitted of a custom of the country that the lessor might put cattle of his own on the land called "summerleazes" up to 12th May (f).

SECT. XII.—GAME.

										1	PAGE
Reservation of game to landlord.					•					•	406
Ground Game Act, 1880						•	•		_		408
Construction of agreements relatin	e to	9	ame	3							411

Reservation of game to landlord.

Primâ facie the right to game is in the lessee of land (q), but, subject to the provisions of the Ground Game Act, 1880 (h), the lessor can expressly reserve the right to himself, and his power

- (a) See note (z), p. 405.
 (b) Wood and Foster's Case (1587),
 1 Leon. 42.
 (c) Holme v. Brunskill (1877), 3
 Q. B. D. 495.
- (d) Spencer's Case (1683), 5 Rep. 16 b (3rd resolution).
- (e) R. v. Tolpuddle (1792), 4 T. R. 671; Burt v. Moore (1793), 5 T. R. 329. (f) Tudgay v. Sampson (1874), 30 L. T. 262.
- (g) Pochin v. Smith (1888), 52 J. P. 4. (h) Infra, p. 408.

to do so is recognized by the Game Act, 1831, which enacts (in sect. 8) as follows:—

"Nothing in this Act contained shall authorize any person seized or possessed of or holding any land to kill or take the game, or to permit any other person to kill or take the game upon such land, in any case where, by any deed, grant, lease, or any written or parol demise or contract, a right of entry upon such land for the purpose of killing or taking the game hath been or hereafter shall be reserved or retained by or given or allowed to any grantor, lessor, or other person whatsoever."

1 & 2 Will, 4, c. 32, s. 8. Landlord's right to game under reservations, &c.

The same Act provides that the landlord may authorize other persons to kill game, and it imposes penalties on the unlawfulkilling of game by the occupier, sects. 11 and 12 being as follows:---

"Where the lessor or landlord shall have reserved to himself Sect. 11. the right of killing the game upon any land, it shall be lawful for him to authorize any other person or persons, who shall have obtained an annual game certificate, to enter upon such land for the purpose of pursuing and killing game thereon."

"Where the right of killing the game upon any land is by this Act given to any lessor or landlord, in exclusion of the right of the occupier of such land, or where such exclusive right hath been or shall be specially reserved by or granted to, or doth or shall belong to, the lessor, landlord, or any person whatsoever other than the occupier of such land, then, and in every such case, if the occupier of such land shall pursue, kill, or take any game upon such land, or shall give permission to any other person so to do, without the authority of the lessor, landlord, or other person having the right of killing the game upon such land, such occupier shall, on conviction thereof before two justices of the peace, forfeit and pay for such pursuit such sum of money not exceeding two pounds, and for every head of game so killed or taken such sum of money not exceeding one pound, as to the convicting justices shall seem meet, together with the costs of the conviction."

For all the purposes of the Act the word "game" is (sect. 2) Sect. 2. to be deemed to include "hares, pheasants, partridges, grouse, Meaning of heath or moor game, black game, and bustards"; and the effect of the above sections is limited accordingly. Sect. 30, Sect. 30. however, goes further, and imposes a penalty on persons trespassing in the daytime upon any land in search or pursuit

Landlord to whom game is reserved may authorize other persons to pursue and kill it, Sect. 12.

Where game belongs to landlord, occupier to be subject to penalty for pursuing or killing it.

Penalty on trespassing. of game, "or woodcocks, snipes, quails, landrails, or coneys"; and, unless the occupier has the right to the game, a licence from him will not be a defence to a person charged with so trespassing. If the actual occupier, not being entitled to the game, has given such a licence, the lessor, or other person having the right to the game, is for the purpose of prosecution under the section to be deemed to be the legal occupier of the land.

Reservation depends on right of entry. To constitute a reservation of game to the landlord, it is not sufficient that the tenant agrees that he will not destroy it, and will forbid other persons to sport or trespass upon the land, and will preserve the game. There must also be a reservation to the landlord of a right of entry (i). Consequently, without such reservation, the tenant cannot be convicted, under sect. 12 of the Act of 1831, of killing game (i), though he would be liable on his agreement.

Rights of licensees.

Where, apart from the Ground Game Act, 1880, a reservation of the right of sporting leaves the tenant at liberty to kill rabbits, he can direct other persons to do so, and such persons are not liable under sect. 30 of the Act of 1831 (k), though it is otherwise where he simply gives leave to other persons to kill rabbits (l).

If there is no reservation of game to the landlord, the tenant can give other persons leave to sport over the land (m); but the leave must be actually given before the sporting begins, and a person is not saved from the penalty under sect. 30 of the Act of 1831 by his bonâ fide belief that he had the occupier's leave (n). A reservation of game to the landlord upon a verbal letting enables the landlord to give authority to a person to kill game so as to save such person from being a trespasser under sect. 30 (o).

THE GROUND GAME ACT, 1880.

43 & 44 Vict. c. 47.

The Ground Game Act, 1880 (p), defines the words "ground game" to mean, for the purposes of the Act, hares and rabbits (q),

- (i) Coleman v. Bathurst (1871), L. R. 6 Q. B. 366.
- (k) Spicer v. Barnard (1859), 28 L. J. M. C. 176; Padwick v. King (1859), 29 L. J. M. C. 42.
- (l) Pryce v. Davies (1871), 35 J. P. 374.
- (m) Pochin v. Smith (1888), 52 J.P.4. (n) Morden v. Porter (1860), 7
- C. B. N. S. 641.
- (o) Jones v. Williams (1877), 46 L. J. M. C. 270.
 - (p) 43 & 44 Vict. c. 47.
 - (q) Sect. 8.

and confers upon occupiers an indefeasible right to kill ground game (r), sect. 1 enacting as follows:—

"Every occupier of land (s) shall have, as incident to and Sect. 1. inseparable from his occupation of the land, the right to kill and take ground game thereon concurrently with any other kill ground person who may be entitled to kill and take ground game on the same land: provided that the right conferred on the occupier by this section shall be subject to the following limitations:"

The limitations which follow are, briefly, these: -The occupier Limitations may kill ground game only by himself or by persons duly authorized by him in writing; the occupier himself and only game. one other person authorized by him may kill ground game with firearms; the persons authorized must be members of the occupier's family resident on the land, persons in his ordinary service on the land, and one other person bona fide employed by him for reward in the destruction of ground game. The person authorized must, on demand by any person having a concurrent right to kill ground game, produce the document by which he is authorized (t).

An occupier entitled otherwise than under the Act of 1880 to Right cannot kill ground game retains, as incident to his occupation, the right declared by sect. 1, notwithstanding that he gives the right to kill ground game to any other person (u). Agreements which purport to divest or alienate the occupier's right under the Act, or which give to such occupier any advantage in consideration of his forbearing to exercise such right, or impose upon him any disadvantage in consequence of his exercising

Occupier to have right to game concurrently with any other person entitled. on right to kill ground

be divested.

(r) Sect. 5 saved rights under leases and agreements current at the passing of the Act, and provided that tenancies from year to year or at will should determine for the purposes of the Act at the date when they would have been determined by notice to quit given on the passing of the Act. See, as to the effect of the section, Allhusen v. Brooking (1884), 26 Ch. D. 559; Hassard v. Clark (1884), 13 L. R. Ir. 391.

(s) A person is not to be deemed an occupier of land for the purposes of the Act by reason of his having a right of common over the land, or by reason of an occupation for the purpose of grazing or pasturing

sheep, cattle, or horses for not more than nine months: clause (2) of proviso to sect. 1. Clause (3) of the same proviso restricts the time during which the rights conferred by the section can be exercised in respect of moorlands and uninclosed lands (not being arable lands) to the period from the 11th December in one year until the 31st March in the next year; except as to detached portions of moorlands or uninclosed lands (adjoining arable lands) which are less than twenty-five acres in extent.

(t) Sect. 1 (1).

(u) Sect. 2; Morgan v. Jackson, [1895] 1 Q. B. 885.

such right, are void (x). But a clause in a lease which is thus rendered void does not invalidate the remainder of the lease (y); and where a lease of a farm contains a reservation to the lessor of the exclusive right to enter upon the farm for the purpose of sporting, the reservation, though void (by reason of the Act) as to ground game, may be good as to winged game (z).

Restrictions on exercise of right.

The rights of occupying owners.

Sect. 6 of the Act contains a restriction on the use of firearms at night for the purpose of killing ground game, and on the employment of spring traps (except in rabbit-holes) and poison:

The Act contemplates and applies to all occupiers, of whatever kind, who, by reason of the existence of sporting rights in other persons, would not, in the absence of the Act's provisions, have the right of killing the ground game. Accordingly, an owner occupying his own land may be entitled, as an "occupier" within the meaning of sect. 1 of the Act, to trap rabbits on the land, notwithstanding that, but for the Act, he would not be entitled to do so, owing to the sporting rights not being in his own hands (a). The limitations and conditions of the Act are, however, inapplicable to a case where an owner occupying his own land has got the sporting rights also in his own hands (b). Such an occupying owner is not debarred from disposing as he pleases of the right to kill ground game, nor is he subject to the restrictions of sect. 6 as to the mode of killing the game (c). But a lessee who has the right to kill game apart from the Act is subject to those restrictions (d).

Construction of demise or reservation of ing, &c.

Under a demise or reservation of the exclusive right of hunting, shooting, fishing and sporting over a farm, the person entitled to right of shoot- shoot over the farm must not trample fields of standing crops at a time when it is not usual or reasonable to do so (e). The reservation includes whatever is ordinarily known as "hunting, shooting, fishing and sporting," and under it the tenant of the land is not entitled (apart from statute) to shoot rabbits (1). He

- (x) Sect. 3. For an instance of an agreement which was held void under this section, see Sherrard v. (fascoigne, [1900] 2 Q. B. 279.
- (y) Beardmore ∇ . Meakin (1885), L. J. N. C. p. 8.
- (z) Stanton v. Brown, [1900] 1 Q. B. 671.
- (a) Anderson v. Vicary, C. A., [1900] 2 Q. B. 287, at p. 295, affirming Wright, J., [1899] 2 Q. B. 436.
- (b) Anderson v. Vicary, [1900] 2 Q. B. at p. 294.
- (c) Smith v. Hunt (1886), 54 L. T. 422; explained in Anderson v. Vicary, C. A., supra.
- (d) Saunders v. Pitfield (1888), 58 L. T. 108.
- (e) Hilton v. Green (1862), 2 F. & F. 821.
- (f) Jeffryes v. Evans (1865), 19 C. B. N. S. 246, 264.

may, however, use the land in the ordinary and reasonable way; but must not resort to expedients for driving the game away (g). The destruction of furze and underwood in such reasonable use of the land is no eviction from the right of shooting (g). It seems that a grant of leave to hunt over premises does not give the grantee the liberty of shooting over them (h).

In connection with the topic under consideration the following cases may be referred to:-

EXCEPTION of liberty for each tenant on his farm to kill rabbits with ferrets only (in a demise of a house and land with sole licence of shooting and sporting over lands, plantations and relating to coverts of the lessor). The exception extends not only to farms existing at the time of the demise, but also to plantations, &c., which are subsequently let as farms (i).

Construction of special agreements game.

GRANT to a person, his heirs and assigns, of free liberty, with servants or otherwise, to come into and upon lands and there to hawk, hunt, fish and fowl. This is a grant of a licence of profit, and not of a mere personal licence of pleasure; therefore it authorizes the grantee, his heirs and assigns, to hawk, &c., by his servants in his absence (k).

Grant to lessee of right of sporting over land demised and other lands, "in common with the lessor, his heirs and assigns, and any friend of his or them." The exercise of the privilege is not confined to a single friend at a time (l).

The lessor, or other person entitled to sporting rights, is not Excess of entitled to bring game on the land, or to cause it to increase to an unreasonable extent, and if he does so the tenant may maintain an action for the damage done to his crops (m). And where a lease is taken on the faith of a parol undertaking by the landlord to kill down the game, this will be enforced as a collateral agreement (n). But a covenant by the lessee of sporting rights

(y) Jeffryes v. Erans, 19 C. B. N. S. p. 266.

(h) See judgment of Gibb, C.J., in Moore v. Plymouth (1817), 7 Taunt. at p. 627.

(i) Newton **v.** Wilmot (1841), 8

M. & W. 711.

(k) Wickham v. Hawker (1840), 7 M. & W. 63. See Ewart v. Graham (1859), 7 H. L. C. 331.

(l) Gardiner v. Colyer (1864), 12 W. R. 979. Cf. Grove v. Portal, [1902] 1 Ch. 727 (demise of exclusive right of fishing, with liberty of ingress, &c., for the lessee and his authorized friends).

(m) Farrer v. Nelson (1885), 15 Q. B. D. 258; Hilton v. Green (1862), 2 F. & F. 821; Birkbeck v. Paget (1862), 31 Beav. 403.

(n) Morgan v. (4riffith (1871), L. R. 6 Ex. 70; Erskine v. Adeane (1873), 8 Ch. 756. See the observations on these cases in the judgment of the C. A. in De Lassalle v. Guildford, [1901] 2 K. B. at p. 223.

to keep down rabbits cannot be enforced against the lessee if the lessor has not reserved the right of sporting on the land in the occupation of his tenants, so that the lessee cannot enter on such lands (o).

The right of fishing.

It may here be noticed that, by an ordinary lease of agricultural or other land situate on the banks of a stream, the right of fishing in the stream opposite the land passes to the tenant, as a part of what is demised, and for the very good reason that he alone has, during the lease, the right of going on to the banks, unless the landlord expressly reserves the fishery (p).

SECT. XIII.—UNDERLEASES.

									PAGE
(1)	Right to underlet			•		•		•	412
•	Where there is no express agreement		•		•				412
	Where there is an express agreement			•					413
(2)	What constitutes an underlease		•				•		414
•	Underleases distinguished from assignments	•		•		•			414
(3)	Rights and liabilities of underlessee						•	•	415
` '	As against original lessor								415
	,, underlessor				•		•		417
	Liability of underlessees as between themselves			•		•		٠	418

(1) RIGHT TO UNDERLET.

Where there is no express agreement.
Tenant for years or from year to year.

A lessee for years or from year to year, unless restrained by express agreement, may, without the consent of his lessor, grant underleases for any number of years less than the term for which he holds the premises. A demise by a tenant from year to year to another, also to hold from year to year, is, in legal operation, a demise from year to year during the continuance of the original demise to the intermediate landlord (q). Where a tenant for a term of years sublets part of the premises to a tenant from year to year, and at the end of the term agrees with the superior landlord to hold from month to month, this does not prevent the continuance of the yearly subtenancy (r).

Tenant at will.

There cannot, strictly speaking, be a tenant to a tenant at will, since, if the latter leases, the will is determined (s). But though a tenant at will cannot, as against his landlord, constitute another person tenant at will, he can make a tenant at

- (o) Cornewall v. Dawson (1871), 24 L. T. 664.
- (p) Davies v. Jones, [1902] 18 T. L. R. 367.
- (q) Per Parke, B., in Oxley v. James (1844), 3 M. & W. 209, 212; Pike v. Eyre (1829), 9 B. & C. 909;
- Mackay v. Mackreth (1785), 4 Doug. 213.
- (r) Peirse v. Sharr (1828), 2 Man. & Ry. 418.
- (s) Judgment of Buller, J., in Birch v. Wright (1786), 1 T. R. at p. 382. See infra, Chap. VI., Sect. 1(2).

will as against himself (t). One tenant at sufferance cannot make Tenant at another (u).

sufferance.

Leases frequently contain an express stipulation against the Where there lessee subletting without first obtaining the consent in writing is an express agreement. of the lessor (x). An agreement for a building lease containing such a stipulation will be specifically enforced, although the lessee alleges that he did not intend to build himself (y).

The effect of a provision that the consent is not to be unreasonably withheld will be considered under the head of "Assignment" (z).

The following cases illustrate the construction of some pro- Construction visions relative to underletting:-

of provisions relative to underletting.

COVENANT not to underlease is broken by an underletting from year to year (a).

COVENANT, by lessee, not to grant any underlease for any term whatsoever, or let, assign, transfer, set over or otherwise part with the messuage and premises without the special licence of the lessor. This extends only to underlettings for which a licence might be expected to be applied for, and therefore letting lodgings is not a breach of the covenant (b), though it is otherwise if the lessee parts with the exclusive possession of any portion of the demised premises (c).

COVENANT not to assign, transfer, set over or otherwise do or put away the lease or premises. Does not extend to an underlease for part of the term (d).

Proviso not to assign or otherwise part with the premises or any part thereof for the whole or any part of the term. words include an underlease (e).

(t) Per Patteson, J., in Doe v. Carter (1847), 9 Q. B. at p. 865.

(u) Judgment of Lord Ellenborough, C.J., in Thunder v. Belcher (1803), 3 East, at p. 451. See Shopland v. Ryoler (1603), Cro. Jac. 55.

(x) As to the rights of the lessee against a sub-lessee who has gone into possession, in the event of the landlord refusing his consent, see Fawkner v. Booth (1893), 10 T. L. R. 83. If the sublessee himself procures the disapproval of the landlord, he cannot get relief against the forfeiture of his deposit: Davis v. Nisbett (1861), 10 C. B. N. S. 752.

(y) Haberdashers' Co. v. Isaac

(1857), 3 Jur. N. S. 611.

(z) Infra, Chap. V., Sect. 1 (1). (a) Timms \forall . Baker (1883), 49 L. T. 106.

(b) Doe v. Laming (1814), 4 Camp.

(c) See Roe v. Sales (1813), 1 M. & S. 297; and observations of Parke, B., in Greenslade v. Tapscott (1834), 1 Cr. M. & R. at p. 59. As to stalls in an opera-house, see Croft v. Lumley (1857), 6 H. L. C. 672.

(d) Crusoe v. Bugby (1771), 2 W. Bl. 766; Church v. Brown (1808), 15 Ves. at p. 265.

(e) Doe v. Worsley (1807), 1 Camp.

Proviso for re-entry if the lessee does any act whereby the premises become vested for the whole or any part of the term in any person other than the lessee (f). Includes a subletting from year to year.

COVENANT not to let, set or demise the premises for all or any part of the term. An assignment will be a breach (g).

Breach of covenant.

A mere advertising for a tenant works no forfeiture under a covenant against underletting (h). To constitute a breach there must be a substantial parting with a substantial part of the demised premises (i).

In an old case specific performance of an agreement to grant a lease to the plaintiff was decreed, although he had contracted to underlet the premises for a purpose which would, if executed, contravene the original agreement (k).

Covenant in underlease.

Where a lease contains a covenant against assigning or underleasing without the consent of the lessor, and such consent having been obtained, the lessee agrees to grant an underlease which is to contain provisions in all respects like those in the original lease, the covenant against assignment in the underlease should stipulate for the assent of the underlessor, and not of the headlessor (1); unless there are indications in the agreement that the covenants of the headlease are to be inserted without modification (m).

Approval of headlessor.

Where an agreement for a lease provides for payment of rent till the lease is granted, and the agreement is made subject to approval by the superior landlord, this approval is a condition precedent to a claim for rent (n).

(2) WHAT CONSTITUTES AN UNDERLEASE.

Underleases distinguished from assignments.

The term granted by an underlease must be shorter than that which the underlessor himself possesses, although, as already stated, a tenant from year to year can underlet from year to year, and he will still retain a reversion which entitles him to distrain (o).

- (f) Dymock v. Showell's Brewery Co. (1898), 79 L. T. 329.
- (g) Greenaway v. Adams (1806), 12 Ves. 395. Cf. Re Doyle and O'Hara's Contract, [1899] 1 I. R. 113.

(h) Gourlay v. D. of Somerset (1812), 1 V. & B. 68.

- (i) Mashiter v. Smith (1887), 3 T. L. R. 673.
 - (k) Williams v. Cheney (1796), 3

Ves. 59.

(1) Williamson v. Williamson (1874), L. R. 9 Ch. 729.

(m) Haywood v. Silber (1885), 30 Ch. D. 404.

- (n) Brook v. Fletcher (1877), 37 L. T. 100.
- (o) Curtis v. Wheeler (1830), Moo. & M. 493; supra, p. 255.

A grant by a man by deed of the whole of his interest in premises, or of a greater interest in them than he actually possesses (p), will operate as an absolute conveyance or assignment, whatever may be the form of words used, and though the deed reserves rent, and contains a power of re-entry on non-payment of rent(q). Since no reversion remains in the grantor, he cannot distrain for the rent(r), the statutory remedies for a rent-seck not applying to such a case (s). Even if an underlease for longer than the residue of the original term leaves in the underlessor a reversion by estoppel, yet this will not pass on a subsequent assignment of the residue of the original term, so as to enable the assignee to sue on the covenants in the underlease (t). And the payment of an instalment of the consideration for the assignment, though called rent, does not operate as an attornment so as to give a power of distress (u). A rent reserved on such a grant, however, is not merely a gross sum, but a payment in the nature of rent, and is recoverable as such(x). Similarly, where the parties intend to create the relation of landlord and tenant, a parol demise for all the residue of the interest of the lessor, since it cannot operate as an assignment, may be construed as a lease, and the lessor may maintain an action of use and occupation, or of debt for the rent thereby reserved, though he cannot distrain for it (y).

(3) RIGHTS AND LIABILITIES OF UNDERLESSEE.

The underlessee is not personally liable for the rent reserved As against in the original lease (z), but any goods belonging to him which lessor.

- (p) Hicks v. Downing (1697), 1 Ld. Raym. 99; Wollaston v. Hakewill (1841), 3 M. & Gr. 297, p. 323. See Baker v. Gostling (1834), 1 Bing. N. C. 19.
- (q) Beardman v. Wilson (1868), L. R. 4 C. P. 57; Palmer v. Edwards (1783), 1 Dougl. 187 (note); Parmenter v. Webber (1818), 8 Taunt. 593; Thorn v. Woollcombe (1832), 3 B. & Ad. 586; Pluck v. Digges (1831), 5 Bligh, N. S. 31. See Smith v. Maplebuck (1786), 1 T. R. 441; Bryant v. Hancock & Co., [1898] 1 Q. B. 716, affirmed, [1899] A. C. 442; 15 T. L. R. 490.
- (r) See Pascoe v. Pascoe (1837), 3 Bing. N. C. 898.
- (8) Anon. v. Cooper (1768), 2 Wils. 375. Cf. Langford \mathbf{v} . Selmes (1857),

- 3 K. & J. 220.
- (t) Norris v. Craig (1895), 43 W. R. 480.
- (u) Hazeldine v. Heaton (1883), C. & E. 40.
- (x) Baker v. Gostling (1834), 1 Bing. N. C. 19; Williams v. Hayward (1859), 1 E. & E. 1040; Newcomb v. Harvey (1691), Carth. 161.
- (y) Pollock v. Stacy (1847), 9 Q. B. 1033. See observations of Bovill, C.J., in Beardman v. Wilson (1868), L. R. 4 C. P. at p. 58. See also Poultney v. Holmes (1721), 1 Stra. 405; Preece v. Corrie (1828), 5 Bing. 24; and cf. Barrett v. Rolph (1845), 14 M. & W. 348.
- (z) Holford v. Hatch (1779), 1 Dougl. 183.

As to rent.

are upon the demised premises may be distrained for arrears of rent due by the original lessee (a).

As to covenants in original lease. The underlessee is not directly liable for breaches of the covenants in the original lease (b), but he may be evicted by the original lessor for a forfeiture incurred by such breaches (c), and, in that case, it is conceived that, in the absence of fraudulent misrepresentation or concealment, he will have no remedy against his immediate lessor (d).

Mortgage by subdemise.
Receiver.

It follows from the non-liability of an underlessee to the headlessor for rent or other outgoings, which results from the absence of privity of estate between them, that, where there has been a mortgage of leaseholds by subdemise, and, in an action by the mortgagee to enforce his security, the Court has appointed a receiver, the receiver, being appointed in right of the mortgagee, is under no liability to pay the headrent or outgoings. The headlessor may, in a proper case, apply for and obtain leave from the Court to re-enter, or to distrain. But he has no legal or equitable right to require the receiver to pay any rent or other outgoing in respect of his possession of the premises, even though the receiver may, by direction of the Court, have sold off the mortgagor's goods, and thereby debarred the headlessor from any remedy by distress (e).

Underlessee considered to have notice of covenants in original lease. Moreover, it is the duty of a person contracting for an underlease from year to year (f), or for any longer term, to inform himself of the covenants contained in the original lease; and if he enters and takes possession of the property, he will be considered as having full notice of, and will, in equity, be bound by such covenants (g). Hence the original lessor may obtain an injunction to restrain the underlessee from committing breaches of restrictive covenants in the original lease (h). Where a person takes an underlease from the assignee of a lease, the

(a) See supra, pp. 245, 257.

(b) See Berney v. Moore (1791), 2

Ridg. P. C. p. 323.

(c) See per Stirling, J. in *Hand* v. *Blow*, [1901] 2 Ch. 721, at p. 726.

(d) See Spencer v. Marriott (1823), 1 B. & C. 457, 459. As to the possibility of a remedy under the covenant for quiet enjoyment, see supra, p. 402, and Hayward v. Parke (1855), 16 C. B. 295, 325.

(e) Hand v. Blow, supra. (f) Wilson v. Hart (1866), L. B. 1 Ch. 463.

(g) Cosser v. Collinge (1832), 3 My. & K. 283. See Flight v. Barton (1832), ib. 282; Clements v. Weller (1865), L. B. 1 Eq. 200; Nash v. Cochrane (1839), 3 Jur. 973; and John Brothers, &c., Co. v. Holmes. [1900] 1 Ch. 188 (underlessee, with notice, of a tied public-house).

(h) See Clements v. Welles, supra; Tritton v. Bankart (1887), 56 L.T. 306.

underlessee, without notice, is bound by the covenants contained in the assignment (i).

An agreement to grant an underlease with specified covenants Rights under is equivalent to a representation that the headlease allows of underlease. such a grant, and, unless the underlessee has had a chance of inspecting the headlease (k), an underlease subject to narrower covenants will not be enforced (1); but in an action for breach of the agreement it has been held to be enough if the lessee shows that he was ready to grant an underlease according to the agreement, although not warranted by the headlease (m). If the underlessee is expressly informed of the restrictions in the headlease, he takes the risk of any permission to neglect the restrictions given to him by his own lessor (n).

Covenants to repair in a lease and an underlease granted Liability of at different periods, though in terms the same, are in effect substantially different, because each must be construed with reference to the age and character of the premises at the date of the demise. The underlessee is only bound to put them in the same condition as he found them in at the time of the lease to him (o). Hence the covenant in the underlease is not a covenant of indemnity, and if the original lessor has sued the lessee on his covenant to repair, the latter, though he can recover from his underlessee damages for the breach of covenant by the underlessee (p), cannot recover the costs incurred in defending the action (q), or damages for the forfeiture incurred through

agreement for

underlessee to underlessor as to repairs.

(i) Clements v. Welles, supra.

(k) Hyde v. Warden (1877), 3 Ex. D. 722. An express covenant by the underlessee to deliver up landlord's fixtures does not imply a covenant by the underlessor that he will be at liberty to remove trade fixtures: Porter v. Drew (1880), 5 C. P. D. 143.

(l) Van v. Corpe (1834), 3 My. &

K. 269.

(m) Hayward v. Parke (1855), 16 C. B. 285 (on the ground that the sublessee would have his remedy against the lessee on his covenant for quiet enjoyment).

(n) Brooks v. Tolputt (1884), 1

T. L. R. 39.

(o) Pontifex v. Foord (1884), 12 Q. B. D. 152; Walker v. Hatton (1842), 10 M. & W. 249. As to the damages recoverable against a sublessee for breach during the term of a covenant to keep in repair, see Conquest v. Ebbetts, [1896] A. C. 490; supra, p. 346.

(p) So he can recover the expenses of repairs executed under threat of forfeiture: Colley v. Streeton (1823), 2 B. & C. 273.

(q) Penley v. Watts (1841), 7 M. & W. 601; Walker v. Hatton (1842), 10 M. & W. 249; overruling Neale v. Wyllie (1824), 3 B. & C. 533. Substantial damages are recoverable, although the lessee incurs a forfeiture of the term by non-payment of rent: Davies v. Underwood (1857), 2 H. & N. 570; and as to the rights of the sublessor against the sublessee when a forfeiture of the headlease has been incurred, see Clow v. Brogden (1840), 2 M. & Gr. 39.

breach of the lessee's covenant (r). But if the sublease is made "subject in all respects to the terms of the existing lease and the covenants and stipulations contained therein," this is a covenant of indemnity, and the lessee is entitled against the sublessee to the costs of an action which the lessee has reasonably defended (s).

As to rent.

An undertenant may deduct from his rent compulsory payments made by him of arrears of rent due from the original tenant to the original landlord (t).

Liability of underlessees as between themselves. Where underlessees hold separate portions of premises at distinct rents, the whole of the premises being held under one original lease at an entire rent; and one of the underlessees under threat of a distress by the owner of the reversion on the original lease pays the whole rent, an action is not maintainable by him to recover from the other underlessee, as money paid to his use, the proportion of the rent due from him(u). And similarly, where one part of the demised land has been assigned, and the rest underlessed, since the parties are not liable to a common demand, and there is no one entitled to sue the underlessee for his share, the assignee cannot enforce contribution from the underlessee (x).

Renewal of underlease.

Where an underlessor covenants for renewal of the underlesse at the same rent, provided he obtains a renewal of his own lesse, the underlessee is entitled to renewal without contributing to the fine or increased rent required on renewal of the headlesse (y).

(r) Logan v. Hall (1847), 4 C. B. 598; infra, Chap. VI., Sect. 2 (3) (i.). (s) Hornby v. Cardwell (1881), 8 Q. B. D. 329. See Hammond v. Bussey (1887), 20 Q. B. D. 79. As to the parties where there is a covenant of indemnity, see Byrne v. Brown (1889), 22 Q. B. D. 657.

(t) Supra, p. 233.

300.

(x) Johnson v. Wild (1890), 44 Ch. D. 146.

(y) Evans v. Walshe (1805), 2 Sch. & Lef. 519; Revell v. Hussey (1813), 2 Ball & B. 280; Lawder v. Blackford (1815), Beat. 522. And as to

the head-renewal not being in the name of the underlessor, see Lumley v. Timms (1873), 28 L. T. 608.

⁽u) Hunter v. Hunt (1845), 1 C.B.

CHAPTER V.

ASSIGNMENTS.

		PAGE
SECT. I.	Voluntary	. 419
	(1) Right to assign	. 419
	Where there is no express agreement	. 419
	Where there is an express agreement	. 420
	Construction of covenant not to assign	. 420
	Consent to assignment	. 423
	Damages for breach	. 425
	Effect of licence to assign	. 426
	(2) Contract for assignment	. 426
	(3) Mode of making assignment	. 428
	Statutory requisites	. 428
	(4) Rights and liabilities of assignee	. 430
	As against lessor	. 430
	Covenants running with land	. 433
	Effect of reassignment	
	Continued liability of losses	. 440
	Continued liability of lessee	. 441
	As against lessee	. 441
	Covenants to indemnify lessee	. 442
G TT	(5) Grant by landlord of his reversion	. 444
SECT. II.	Involuntary	. 450
	(1) On death	. 450
	Of lessor	. 450
	Of lessee	. 450
	Executor's assent to bequest of leaseholds .	. 450
	,, liability under lease	. 452
	(2) On bankruptcy of lessee	. 454
	Vesting in trustee in bankruptcy	. 458
	Disclaimer	. 458
	(3) On conviction of lessee for felony	. 461

SECT. I.—VOLUNTARY ASSIGNMENTS.

(1) Right to Assign.

THE right to assign, unless expressly restrained, is incident to Where there the estate of every tenant (a), except a tenant by sufferance. agreement for a lease, and even an option to require a lease or a renewal of a lease, is assignable in equity, even although there is no mention of executors, administrators, or assigns (b). An

is no express agreement.

(a) See Church v. Brown (1808), 15 Ves. at p. 264; Doe v. Carter (1798), 8 T. R. p. 60.

(b) Per Lord Lindley in Tolhurst

v. Associated Portland Cement Manufacturers, [1903] A. C. 414, at p. 423, a case in which the assignability of contracts was much discussed.

assignment by a tenant at will determines the tenancy if the lessor has notice, but not otherwise (c).

Where there is an express agreement.

The lessor may, either by proviso or covenant, restrain the lessee from assigning (d); and if the lessor grants the term subject to a condition that it shall cease if the lessee assigns, an assignment by the lessee will be void. But covenants restrictive of a tenant's right to assign have always been construed by the Courts with the utmost jealousy to prevent the restraint from going beyond the express stipulation. Accordingly, where s covenant against assignment applies, in terms, only to an assignment of the whole of the demised premises, it is not broken by an assignment of a part of them (e). Where the restraint is by covenant only, the lessee by assigning will commit a breach of covenant, but the assignment itself will not be void (f). A proviso against assignment without licence contained in a lease to the lessee, his executors, administrators and assigns, is not repugnant; for the assigns mentioned in the proviso must be understood to be such as the lessee may lawfully have, i.e., assigns by licence (q). The covenant is still binding although the lessor has entered into possession of part of the land (h).

Construction of covenant not to assign.

A covenant not to assign or otherwise part with the demised premises or any part thereof without the licence of the lessor does not extend to an involuntary assignment, upon the death (i) of the lessee, or upon his bankruptcy (k), even though the adjudication be on his own petition (l); or under a bonâ fide execution against

(c) Pinhorn v. Souster (1853), 8 Ex. 763; Carpenter v. Colins (1606), Yelv. 73. See infra, Chap. VI., Sect. 1 (2).

(d) If the assignment is void in law as an act of bankruptcy, it will not be a cause of forfeiture under a clause of re-entry on assignment without licence: Doe v. Powell (1826), 5 B. & C. 308.

(e) Grove v. Portal, [1902] 1 Ch. at pp. 731, 732, where the demise was of an exclusive right of fishing, and the lessee was held to be not precluded from granting a limited licence to fish; Joyce, J., following a dictum of Lord Eldon in Church v. Brown (1808), 15 Ves. at p. 265, that a covenant not to part with the possession of the premises "would not have restrained the tenant from parting with a part of the premises."

(f) See remarks of Holroyd. J., in Paul v. Nurse (1828), 8 B. & C. at p. 488.

(g) Weatherall \forall . Geering (1806), 12 Ves. 504, 511.

(h) Collins v. Sillye (1651), Sty. 265.

(i) See Seers v. Hind (1791), 1 Ves. p. 295; Roe v. Harrison (1788), ? T. R. 425.

(k) Doe v. Bevan (1815), 3 M. & S. 353, 358, 360. See Weatherall v. Geering (1806), 12 Ves. 504; Due v. Smith (1814), 5 Taunt. 795. As to the effect of the covenant in a lease granted to a limited company which is wound up, see Lord Elphinstone v. Monkland Iron Co. (1886), 11 App. Cas. 332.

(l) Re Riggs, Ex parte Lovell, [1901]

him (m); or to an assignment to a railway company under the Lands Clauses Act (n); but if the tenant gives a warrant of attorney for the express purpose of having the lease taken in execution (o), or executes a deed assigning his property for the benefit of his creditors (p), he will commit a breach of the cove-And the covenant is not broken by a bequest of the term by the lessee (q), though the contrary seems to have been at one time held (r). The covenant, though expressly extending to assigns of the lease, is not broken by an underlessee parting with the possession, for he is not an assign (s); nor does it bind assigns in law who take involuntarily, as a trustee in bankruptcy (t), though an administrator has been held to be bound as an assign (u). It is conceived, however, that executors or administrators may dispose of the lease (x), unless they are named in the covenant (y).

A covenant not to "assign, underlet, or part with the possession Subdemise to of" the demised property, or any part thereof, without the consent in writing of the lessor, is broken by the lessee subdemising the premises by way of mortgage without the prescribed consent (z).

A covenant in a lease against assigning the demised premises What acts covers (in the absence of any context showing that the covenant is breaches. to have an extended meaning) only a legal assignment. therefore, not broken by anything short of a legal assignment. Accordingly, it is not broken by the lessee executing a declaration of trust of the demised premises (a). So, too, a covenant not to assign or otherwise part with (b) the premises or with the indenture

- (m) Doe v. Carter (1798), 8 T. R. 57. entry in case of tenant losing pos-(n) Slipper v. Tottenham and Hampstead Junction Ry. Co. (1867), L. R. 4 Eq. 112.
 - (o) Doe v. Carter (1799), 8 T. R. 300. (p) Holland v. Cole (1862), 1 H. &
- C. 67. (q) Per Bayley, J., in Doe v. Bevan (1815), 3 M. & S. p. 361; Crusoe v. Bugby (1771), 3 Wils. p. 237; Fox v. Swann (1655), Sty. 482.
- (r) Knight v. Mory (1588), Cro. Eliz. 60; Barry v. Stanton (1594), ib. 330; Parry and Herbert's Cuse (1567), 4 Leon. 5.
- (s) Villiers v. Oldcorn (1903), 20 T. L. R. 11.
- (t) Doe v. Bevan (1815), 3 M. & S. 353. As to effect of power of re-

- session by act of law, see Dyke v. Taylor (1860), 3 D. F. & J. 467.
- (u) Sir William More's Case (1584), Cro. Eliz. 26.
- (x) Seers v. Hind (1791), 1 Ves. jun. p. 295.
- $(y)^{-}$ Roe v. Harrison (1788), 2 T. R. 425.
- (z) Serjeant v. Nash, Field & Co., [1903] 2 K. B. 304, at pp. 310, 312.
- (a) Gentle v. Faulkner, C. A., [1900] 1 Ch. 267, 277, in effect overruling Richards v. Crawshay (1892), 8 T. L. R. 446.
- (b) As to possession by a stranger being evidence of a breach of covenant against parting with possession, see Doe v. Payne (1815), 1 Stark. 86;

of lease is not broken by a deposit of the lease as security for an advance (c); "otherwise part with" is no more than "assign," and the effect of the covenant is only to restrain the lessee from completely alienating the legal estate in the premises (d). Where the lease is vested in partners, an assignment by one partner to the other has been held to be a breach (e); but this has been questioned (f), and at any rate it is no breach if, upon a dissolution, one partner remains in sole possession (f). The covenant is not broken by the sale of the business carried on upon the premises to a limited company, which makes use of them, if the possession is really retained by the lessee (g).

In a recent case, which went to the Court of Appeal, a lease of a theatre contained a covenant by the lessee not to assign, demise, or otherwise part with the indenture, or any estate or interest therein, for all or any part of the term. The lessee granted to a firm of contractors the exclusive right of using all refreshment rooms and bars in the theatre for a term of years. It was held that this was no more than the grant of a privilege, and did not amount to a breach of the covenant (h).

But where, in a lease of limestone quarries with full power and authority to work them, the lessee covenanted not to "assign, demise, or part with the said mines, powers, authorities, or premises, or any part thereof," it was held that an agreement by the lessee to sell carbonate of lime, to be gotten by the purchasers from lands comprised in the demise, was a breach of the covenant (i).

There is a distinction between a covenant not to incumber and a covenant to do nothing whereby the estate may be incumbered, and the former applies only to a direct charge; not to the charge created by a judgment followed by execution (k).

Doe v. Rickarby (1803), 5 Esp. 4. The covenant is not broken by the mortgage of a greenhouse which the lessee is entitled to remove: Moss v. James (1878), 37 L. T. 715.

(c) Doe v. Laming (1824), Ry. & M. 36; Doe v. Hogg (1824), 4 D. & R. 226. See Doe v. Bevan (1815), 3 M. & S. 353.

(d) Per Abbott, C.J., in Doe v. Hogg, 4 D. & R. p. 229.

(e) Varley v. Coppard (1872), L. R. 7 C. P. 505.

(f) Corp. of Bristol v. Westcott (1879), 12 Ch. D. 461, p. 465.

(g) Peebles v. Crosthwaite (1897), 13 T. L. R. 198.

(h) Daly v. Edwardes (1900), 83L.T. 548; affirmed, sub nom. Edwardes v. Barrington, 85 L. T. 650. Cf. Frank Warr & Co. v. London County Council, [1904] 1 K. B. at pp. 718—721.

(i) Lord Mostyn v. Manger (1901), 17 T. L. R. 199, 281, distinguishing Peebles v. Crosthwaite, supru.

(k) Croft v. Lumley (1857), 6 H. L. C. 672; p. 742, per Lord Wensleydale; p. 738, per Lord Cranworth.

If so desired, the licence (l) should expressly forbid the lessee Form of from parting with the possession until a complete transfer of the legal interest has been effected. The practice of letting a purchaser into possession before the legal estate is transferred is, however, so common that, if it is intended to forbid it, such intention must be clearly expressed (m).

not to be arbitrarily or unreasonably with-

Where the covenant against assignment without the consent Consent of the lessor is qualified by the proviso that such consent is not to be withheld "arbitrarily," or "unreasonably or vexatiously," or from an assignment to a "respectable and responsible person," held. this does not imply a covenant by the lessor not to refuse his consent arbitrarily, &c.; but the effect of such a refusal is to leave the lessee at liberty to assign without the lessor's consent (n). And where it is clear that the lessee has such liberty, notwithstanding the withholding of consent, he can obtain specific performance of a contract for assignment (o).

A landlord is not bound to give any reason for refusing his But if he does give a reason, and chooses to say "I will only grant a licence on this or that condition," which condition is an unreasonable one, and the matter then comes into Court, the Court has jurisdiction to make a declaratory order to the effect that the lessor is not entitled to impose the condition, and the lessee is entitled to assign without any further consent on the part of the lessor (p).

Where it is provided that the lessor's consent is not to be withheld arbitrarily or without good and sufficient reason, it is

(1) Where the licence is indorsed on the assignment, it may be in the following form:-

I do hereby consent to the within-

written assignment.

—-- February, 19—. If the licence is not indorsed on the assignment, the following form may De used (no stamp is requisite):—

I do hereby consent to the assignment by C. D. of all his estate in the premises demised by an indenture of lease, dated the —— day of —, 19—, unto P. Q. of —, his executors and administrators; provided that this consent shall not authorize any further assignment of the premises or any part thereof, or in any way affect any of the covenants, conditions, or provisions of the

said lease except as hereby expressed. — February, 19—.

Witness, N. O.

As to the production of the licence, see Walker v. Ballamie (1605), Cro. Jac. 102. If it is required to be in writing, a parol licence is insufficient: Richardson v. Evans (1818), 3 Madd. 218.

(m) West v. Dobb (1869), L. R. 4 Q. B. 634.

(n) Treloar v. Bigge (1874), L. R. 9 Ex. 151; Hyde v. Warden (1877), 3 Ex. D. 72; Sear v. House Property, &c., Society (1880) 16 Ch. D. 387; Goodwin v. Saturley (1900), 16 T. L. R. 437.

(o) White v. Hay (1895), 72 L. T.

281 (a case of underletting).

(p) Young v. Ashley Gardens Properties, [1903] 2 Ch. 112.

enough that in the opinion of the landlord the use of the demised premises proposed by the intended assignee will deteriorate other property of his (q). It seems that an "arbitrary" refusal is the same as an unfair and unreasonable refusal (r), and a refusal "upon advice," though the grounds of the refusal be not specified, is not arbitrary (r). Where a heavy rent is reserved by the lease, strong ground should be shown for refusing consent to an assignment or a subletting (s). Where the consent is not to be refused unreasonably or to an assignment to a "person of responsibility or respectability," a corporation which cannot fulfil the objects of the lease is not within these last words (t). The refusal is not unreasonable if the assignees are not taking the lease for the purpose for which it was granted (t).

Where the consent is not to be arbitrarily withheld, the lessee is bound to ask for the consent, and an omission to do so, through forgetfulness, is not a matter in respect of which the Court can grant relief against a consequent forfeiture (u); even though the withholding of the consent would have been improper (x).

A covenant by the lessor that he will not unreasonably or vexatiously withhold his licence to assign is broken by his refusing his licence to assign to an unobjectionable person, in order thereby to obtain a surrender of the lease for the purpose of rebuilding (y), or in order to obtain possession of the premises himself (z).

Duty to obtain licence.

Upon an agreement to assign a lease containing a covenant not to assign without the licence of the lessor, it is the duty of the vendor, and not of the purchaser, to procure the lessor's licence (a); and damages may be recovered against the vendor if he does not use his best endeavours to do so (b). But if the agreement is expressly made subject to the lessor's approval, it is enough if

(q) Bridewell Hospital v. Fawkner (1892), 8 T. L. R. 637.

(r) Trelour v. Bigge (1874), L. R. 9 Ex. 151.

- (8) Sheppard v. Hong Kong and Shanghai Bkg. Corp. (1872), 20 W.R. 459.
- (t) Harrison, Ainslie & Co. v. Corp. of Barrow-in-Furness (1891), 63 L. T. 834.
- (u) Barrow v. Isaacs, [1891] 1 Q. B. 417.
 - (x) Eastern Telegraph Co., Lim. v.

- Dent (1898), 78 L. T. 713; aff., [1899] 1 Q. B. 835.
- (y) Lehmann v. M'Arthur (1867). L. R. 3 Eq. 746.
- (z) Bates v. Donaldson, [1896] ² Q. B. 241.
- (a) Lloyd v. Crispe (1813), 5 Taunt. 249; Mason v. Corder (1816), 7 Taunt. 9. As to specific performance where consent not obtained, see Leitch v. Simpson (1871), Ir. R. 5 Eq. 613.

(b) Day v. Singleton, [1899] 2 Ch.

309.

the lessee does all he can to get the approval, although the lessor's conduct may in fact be unreasonable and vexatious (c). An assignee or undertenant who comes in, in spite of a covenant against alienation, is none the less subject to the stipulations in the lease (d).

The mere fact that the landlord does not object to the assignee's taking possession cannot, irrespective of all other circumstances, be held sufficient to imply his recognition of the assignee (e); and a lessor who, not being aware of the lessee's covenant against assigning without consent, sees an assignee spending money on the premises, is not bound to assent to the assignment (f). A lessor who is not at first aware of the alienation can forfeit, if such be his remedy, as soon as he hears of it (d).

Formerly a lessor might, unless prohibited by the form of the Payment for lease, stipulate for payment of a sum of money as the condition of his consent to an assignment or underlease, and if the amount was not exorbitant, the assignee or sublessee could insist on specific performance, or, in the alternative, damages (g). But under sect. 3 of the Conveyancing Act, 1892 (h), no fine or sum of money can be demanded for the lessor's consent, though he may require payment of a reasonable sum in respect of any legal or other expense incurred. This does not preclude the demand for deposit of a sum of money by way of security in a case where only part of a building contract has been performed (i).

Where an assignee assigns without licence, it has been held Damages for that the measure of damages in an action for breach of a covenant not to assign is the sum which will, as far as money can, put the lessor in the same position as if he still had the assignee's liability for breaches of covenant both past and future, instead of the liability of another of inferior pecuniary ability (k). Where the lessee sublet the premises for the purpose of a turpentine distillery, and they were in consequence burnt down,

⁽c) Lehmann v. M'Arthur (1868), 3 Ch. 496. As to the effect of an application by the intending assignee for a new lease, see Winter v. Dumergue (1866), 14 W. R. 699.

⁽d) Silcock v. Farmer (1882), 46 L. T. 404.

⁽e) Lord Elphinstone v. Monkland Iren Co. (1886), 11 App. Cas. 332.

⁽f) Willmott v. Barber (1880), 15 C. D. 96.

⁽g) Hilton v. Tipper (1868), 18 L. T. 626.

⁽h) 55 & 56 Vict. c. 13.

⁽i) he Cosh's Contract, [1897] 1 Ch. 9.

⁽k) Williams v. Eurle (1868), L. R. 3 Q. B. 739.

it was held that the loss was the natural result of the breach of the covenant against assignment, and was recoverable as damages (l).

Injunction.

A threatened breach of a covenant not to assign without the lessor's consent may be restrained by injunction (m).

Effect of licence.

Formerly it was held that a licence to assign did away altogether with the covenant against assignment, so that there was no restriction on subsequent alienation (n); but now the licence extends only to the actual assignment, underlease, or other matter thereby specifically authorised to be done (o). Accordingly, where there is a covenant not to assign without the lessor's consent, it applies to a reassignment by an assignee to the original lessee (m).

(2) Contract for Assignment.

Agreement on sale.
Statute of Frauds (p), s. 4.

Any contract for the sale of lands, tenements, or hereditaments, or any interest in or concerning them, must be evidenced by a memorandum in writing; otherwise no action can be brought upon it.

This enactment applies to all agreements which have the effect of binding the lessee to assign the residue of his term. Thus an agreement by A., the tenant, to relinquish possession, and to let B. be tenant for the residue of the term, is an agreement for assignment, and must be in writing (q). And where anything is agreed for which substantially amounts to a sale or parting with an interest in land, the contract is within sect. 4(r).

A parol agreement for the transfer of an interest in land cannot be enforced by an action upon the agreement against the transferee for the stipulated consideration for the transfer, even though the transfer may have been effected, so that nothing remains to be done but the payment of the consideration; but

(l) Lepla v. Royers, [1893] 1 Q. B. 31.

(m) McEacharn v. Colton, [1902] A. C. 104, 107.

(n) Dumpor's Case (1603), 4 Rep. 119 b; 1 Sm. L. C. 10th ed. 31.

(a) 22 & 23 Vict. c. 35, s. 1; Eyton v. Jones (1870), 21 L. T. 789. As to licence to one of several co-lessees, see sect. 2. But a consent may be given to a particular tenant in such terms as to operate as a licence in

favour of a subsequent assignee. See Harman v. Ainslie, [1903] 2 K. B. at p. 244.

(p) 29 Car. 2, c. 3. As to parol evidence to explain the subject-matter of the agreement, see *Horsey* v. *Graham* (1869), L. R. 5 C. P. 9.

(q) Buttermere v. Hayes (1839), 5

M. & W. 456. (r) See Kelly v. Webster (1852), 12 C. B. 283; Smart v. Harding (1855), 15 C. B. 652. if the transferee has, after the transfer, admitted the amount to be due, it may be recovered in an action on an account stated (s).

Formerly, unless there was an express stipulation to the Rights of contrary, every contract for the sale of a lease contained an purchaser as to title. implied undertaking, available at law as well as in equity, to make out the lessor's title to demise as well as that of the vendor to the lease itself (t). But upon the sale of an agreement for a lease, there was no implied contract that the lessor had power to grant the lease (u). Now, under a contract to assign a term of years, derived out of a freehold or leasehold estate, the intended assign is not entitled to call for the title to the freehold (x); and upon a contract to sell and assign a term of years derived out of a leasehold interest in land, the intended assign cannot call for the title to the leasehold reversion (y).

private contract (a), the vendor must disclose all that is necessary to protect himself, and it is not the duty of the purchaser to demand inspection of the lease before entering into the contract. Hence, where upon a sale by auction the particulars and conditions contained no statement as to the covenants in the lease (which were in fact onerous), nor any notice that the lease might be inspected, it was held that the purchaser was not bound to complete (z). And a similar decision was given where, in the case of a contract to grant and take an assignment of a lease containing covenants of an unusual and onerous nature, the intended assignor had not, before the contract was made, either expressly disclosed the covenants to the intended assignee, or given her a fair opportunity of acquainting herself with the terms

of the lease containing them (b). It is a fatal misdescription

that property described as held under a lease is in fact held upon

an underlease, notwithstanding that the lease to be sold shows

Upon the sale of a lease, whether by public auction (z) or by

Disclosure by vendor.

⁽⁸⁾ Cocking v. Ward (1845), 1 C. B. 858.

⁽t) Souter v. Drake (1834), 5 B. & Ad. p. 1002; Purvis v. Rayer (1821), 9 Price, 488.

⁽u) Kintreu v. Perston (1856), 1 H. & N. 357.

⁽x) Vendor and Purchaser Act, 1874, s. 2.

⁽y) Conveyancing Act, 1881, s. 3(1). And see Conveyancing Act, 1882, s. 4,

excluding preliminary contracts for a lease under a power from the title to the lease.

⁽z) Re White and Smith's Contract, [1896] 1 Ch. 637. See, too, Midgley v. Smith (1893), W. N. p. 120.

⁽a) Recve \mathbf{v} . Berridge (1888), 20 Q. B. D. 523.

⁽b) Molyneux v. Hawtrey, [1903] 2 K. B. 487.

by its terms that it is an underlease, and that under the agreement the purchaser is to be deemed to buy with full notice of it (c).

Failure to make title.

If at the date for completion the vendor can neither himself assign, nor compel an assignment from any other person, the purchaser can refuse to proceed. He is not bound to wait and see if a third person, who has the power, will consent to join in making a title (d).

(3) Mode of making Assignment.

Assignment.

The actual assignment was required by the Statute of Frauds to be in writing, and it must now be made by deed.

29 Car. 2, c. 3, s. 3. Assignments to be in writing. The third section of the Statute of Frauds provided that no leases, estates, or interests, either of freehold or terms of years, or any uncertain interest, not being copyhold or customary interest, of, in, to, or out of any messuages, manors, lands, tenements, or hereditaments, should be assigned, unless it were by deed or note in writing, signed by the party so assigning or his agent thereunto lawfully authorized by writing, or by act and operation of law. And the third section of the Real Property Act, 1845, made the more stringent provision that an assignment (e) of a chattel interest, not being copyhold, in any

8 & 9 Vict. c. 106, s. 3. Assignments void at law unless made by deed.

(c) Broom v. Phillips (1896), 74 L. T. 459. See Darlington v. Hamilton (1854), Kay, 550.

(d) Forrer v. Nash (1865), 35 Beav. 167; Warren v. Moore (1898), 42

Sol. Journ. 699. (e) For the stamp duty on an assignment of a lease upon a sale, see supra, p. 176, note (k). As to stamping the agreement for assignment where the interest sold is equitable, see sect. 59 of the Stamp Act, 1891 (54 & 55 Vict. c. 39); as to sale of a lease and goodwill, see West London Syndicate v. Comm. of Inland Revenue, [1898] 2 Q. B. 507. The capitalized value of the rent is not to be treated as part of the consideration by virtue of sect. 57 of the Act of 1891: Swayne v. Comm. of Inland Revenue, [1899] 1 Q. B. 335, 344; affirmed, [1900] 1 Q. B. 172 (payment of rent by assignee not part of consideration for assignment for duty purposes.) The duty on an assignment by way of security is (Stamp Act, 1891, Sched. L), as follows:—

"(1) Being the only or £ s. d. principal or primary security (other than an equitable mortgage) for the payment or repayment of money—

Not exceeding 10%. Exceeding— 10/. and not exceeding 25/. 0 1 *501.* 0 25%. 100%. 0 *50/.* 3 9 **150***l*. 0 100*l*. " **5** 0 2007. 0 150%. " 6 3 250%. 0 2007. 300%. 0 250*l*. 300l.

For every 100l., and also for any fractional part of 100l., of the amount secured 0 2 6

(2) Being a collateral, or auxiliary, or additional, or substituted security (other than an equitable mortgage), or by way of further tenements or hereditaments should be void at law (f) unless made by deed. This requirement extends to the assignment of a tenancy from year to year (g).

In order to pass the legal estate in leasehold property on an Passing the assignment of it, there must appear upon the face of the instrument an intention on the part of the assignor to part with and deliver up the possession, so that the assignee may come in before the determination of the term (h).

legal estate on assignment.

By the Law of Property Amendment Act, 1859—which antici- 22 & 23 pated for leaseholds the provision of sect. 50 of the Conveyancing Act, 1881, with respect to freeholds—any person has Assignor power to assign personal property, at the date of the Act by law assignable, including chattels real, directly to himself and himself and another person or other persons or corporation, by the like means as he might assign the same to another.

Vict. c. 35, s. 21. may assign directly to another

person.

If the land is situated in Middlesex, and is outside the City of London, the assignment must be registered under the Middlesex Registry Registry Act, 1708 (i); except in the case of a lease at a rackrent, or a lease not exceeding twenty-one years, where the actual possession and occupation go along with the lease (j). If the land is situated in Yorkshire, the assignment must be registered under the Yorkshire Registries Acts, 1884 (k) and 1885 (l); but this requirement does not extend to any lease not exceeding twenty-one years, or any assignment thereof where accompanied by actual possession from the making of such lease or assignment (m), or to Crown lands (n).

Registration under the

The Middlesex Registry Act does not apply to an equitable mortgage created by deposit of deeds unaccompanied by any

assurance for the above- £ mentioned purpose where the principal or primary security is duly stamped—

For every 100l., and also for any fractional part of 1001., of the amount secured 0 0

(3) Being an equitable mortgage-

For every 100l., and any

fractional part of 100%, of the amount secured

(f) But apparently an assignment under hand only would operate as an agreement to assign; cf. cases cited supra, p. 125, note (x).

(g) Botting v. Martin '1808), 1 Camp. 317. A covenant to employ

a particular person to draw assignments and underleases does not extend to the assignment of an underlease: Collett v. Young (1885), 33 W. R. 543.

(h) Re Beachey, [1904] 1 Ch. 67, at

pp. 73, 75.

(i) 7 Anne, c. 20. See the Land Registry (Middlesex Deeds) Act, 1891, Sched. I., and Rules of 1892; and Reg. v. Registrar of Middlesex (1850), 15 Q. B. 976.

(j) Sect. 18. See Dart, Vend. and Purch. 6th ed. 769.

(k) 47 & 48 Vict. c. 54. (1) 48 & 49 Vict. c. 26.

(m) Sect. 28 of Act of 1884.

(n) Sect. 30.

memorandum (o); but it is otherwise under the present Yorkshire Act, and, for the mortgagee to obtain priority, he must register an instrument of charge (p). A further charge in favour of a first mortgagee requires to be registered (q).

Under the Middlesex Registry Act, as formerly under the old Yorkshire Acts, registration is an absolute test of priority at law (r), but not in equity; and in equity a person taking under a registered assurance does not obtain priority over an unregistered assurance of which he had notice (s). But under the present Yorkshire Acts registration is the sole test of priority, save in cases of actual fraud (t).

A memorandum of agreement for the sale of land is not an "assurance" capable of registration under the Yorkshire Acts (u).

Registration under the Land Transfer Acts.

If the lease is for a life or lives, or is determinable on a life or lives, or for a term of years, of which more than twenty-one years are unexpired, the assignee can register his title at the Land Registry Office as possessory, qualified, good leasehold, or absolute, under the Land Transfer Acts, 1875 and 1897 (x); and, in a district where registration becomes compulsory, the purchaser of a lease or underlease having at least forty years to run, or two lives yet to fall in, will not obtain the legal estate in the term unless he registers his title (y). If the leasehold land is already on the register, the assignment must be registered.

(4) Rights and Liabilities of Assignee.

1. As against the lessor.

A person who has accepted a valid assignment (z) from the lessee, although he has not taken possession of the premises (a),

- (o) Sumpter v. Cooper (1831), 2 B. & Ad. 223.
- Ch. 403.
- (q) Credland ∇ . Potter (1874), L. R. 10 Ch. 8.
 - (r) Doe v. Allsop (1821), 5 B. & A. 142.
- (s) Le Neve v. Le Neve (1748), 3 Atk. 646, 651.
- (t) See Battison \forall . Hobson, [1896] 2 Ch. 403.
- (u) Rodger ∇ . Harrison, [1893] 1 Q. B. 161.
- (x) See supra, p. 186. Act of 1875, s. 11, 13.
- (y) Land Transfer Rules, 1903, rr. 68—70. It is, however, provided by r. 69 that, when the assignees on sale are the trustees of a settlement for the purposes of the Settled Land

Acts, nothing in that rule is to prevent the legal estate from passing to (p) Battison v. Hobson, [1896] 2 the trustees, provided the tenant for life, or person having the powers of a tenant for life, be registered as proprietor of the land comprised in the assignment within one calendar month from the date thereof, or within such further time as the registrar shall allow.

> (z) Though no assignment is actually proved, possession and payment of rent under the lease show sufficient privity to make the occupier liable as assignee for a forfeiture: Doc v. Durnford (1832), 2 Cr. & J. 667.

(a) Williams v. Bosanquet (1819), 1 [Br. & B. 238; Burton v. Barclay (1831), 7 Bing. 745, 761; Pilkington v. Shaller (1700), 2 Vern. 374.

becomes liable for rent subsequently accruing (b), and for breaches, committed subsequently to the assignment (c), of such of the lessee's covenants as run with the land. On the other hand, he is entitled to sue the lessor for breaches, committed subsequently to the assignment (d), of such of the lessor's covenants as run with the land. A bequest of leasehold property "to the lessees or holders of the present leases" has been held to include the assignees of the original lessees (e).

The assignee of part of the demised premises is liable to an Assignee of action on every covenant running with the land and affecting part of premises. such part (f). He is not chargeable as assignee of the land for the entire rent (g), but after an assignment by the lessee of his interest in part of the demised land, the lessor may distrain upon that part for the rent which has accrued due for the whole (g). It seems that an assignee of an undivided moiety of the land comprised in the lease is chargeable with half the rent (h), or may be sued alone in respect of the covenants in the lease until he shows who are liable jointly with him (i). And where a joint and several covenant is originally entered into by joint lessees, an assignee of any of the lessees is subject to the entire liability (k).

For a covenant to run with the land so as to bind the assignee At law actual of the lease at law, it is necessary that there shall have been an assignment of the whole term either actually (l) or by estoppel (m). Hence an equitable interest in the term does not impose liability (n), and consequently an equitable mortgagee by deposit of a lease, although he has entered into possession and has paid rent, is not liable to the lessor upon the covenants, there being no privity between them until a privity of estate has been

assignment necessary for covenants to

run with land.

(b) As to apportionment of rent, see supra, p. 240.

(c) Grescott v. Green (1701), 1 Salk. 199; St. Saviour's, Southwark v. Smith (1762), 3 Burr. 1271; 1 W. Bl. 351. See Hawkins ∇ . Sherman (1828), 3 C. & P. 459.

(d) Lewes v. Ridge (1601), Cro. Eliz. 863.

(e) King v. Rymill (1898), 78 L. T. 696.

(f) Judgment of Tindal, C.J., in Wollaston v. Hakewill (1841), 3 M. & Gr. p. 322; Com. Dig. tit. Covenant (C.) 3; Congham v. King (1631), Cro. Car. 221; Stevenson v. Lambard

(1802), 2 East, p. 580.

(g) Curtis v. Spitty (1835), 1 Bing. N. C. p. 760.

(h) Gamon v. Vernon (1679), 2 Lev. 231.

(i) Merceron v. Dowson (1826), 5 B. & C. 479.

(k) Norval v. Pascoe (1865), 34 L. J. Ch. 82.

(1) See West v. Dobb (1869), L. R. 4 Q. B. 634.

(m) Williams v. Heales (1874), L. R. 9 C. P. 177.

(n) See Mayor of Carlisle v. Blamire (1807), 8 East, 487.

created by a legal assignment (o); and the equitable mortgages is not compellable in equity at the suit of the lessor to take a legal assignment (o). This result is not altered by the Judicature Acts, since the distinction between legal and equitable estates is still in force (p). An agreement to take an assignment of a lease, followed by possession on the part of the equitable assignee, does not entitle the lessor to sue him on the covenants in the lease (q). But a lessee who has executed a declaration of trust is entitled to be indemnified by the equitable assignee (r). An occupier who gains a title against the lessee under the Statute of Limitations does not take by assignment, and is not liable on the covenants (s).

Upon a legal assignment being effected, the assignee becomes liable, although he takes only as mortgagee (t) or trustee (u), and has not entered into possession (x); and in the latter case the beneficiary cannot be made liable (y). But equity will not interfere to compel a mortgagee by assignment to perform a positive covenant, as a covenant to repair (z).

General assignment A general assignment of personal estate in a creditors' deed will pass leaseholds to the assignee, without specific mention, so as to render him liable on the covenants (a), notwithstanding power is reserved to exclude leaseholds (b)—at any rate until, in pursuance of the power, they are actually excluded (b); unless the specific words used point to chattels only, in which case,

(a) Moore v. Greg (1848), 2 Ph. 717; Moores v. Choat (1839), 8 Sim. 508; Rabinson v. Rosher (1841), 1 Y. & C. C. C. 7; overruling Lucas v. Comerford (1790), 1 Ves. jun. 235; 3 Bro. C. C. 166; 8 Sim. 499.

(p) See Joseph v. Lyons (1884), 15 Q. B. D. 280.

(q) Cox v. Bishop (1857), 8 De G. M. & G. 815; overruling Close v. Wilberforce (1838), 1 Beav. 112. The law as thus settled is not altered by the doctrine of Walsh v. Lonsdale (21 Ch. D. 9; supra, p. 81). See Friary Holroyd and Healey's Breweries v. Singleton, [1899] 1 Ch. 86; reversed on the facts, [1899] 2 Ch. 261; and cf. Ramage v. Womack (liability of cestui que trust for breach of covenant entered into by her trustee, the lessee), [1900] 1 Q. B. 116.

(r) Close v. Wilberforce (1838), 1

Beav. 112; Willson v. Leonard (1840), 3 Beav. 373; as explained in Nokes v. Fish (1857), 3 Drew. 735.

(s) Tichborne v. Weir (1892), 67 L. T. 735.

(t) Haig v. Homan (1830), 4 Bi. N. S. 380; Stone v. Erans (1797), Peake, Add. Cas. 94.

(u) Gretton v. Diggles (1813), 4 Taunt. 766.

(x) Williams v. Bosanquet (1819), 1 Br. & B. 238.

(y) Nokes v. Fish (1857), 3 Drew. 735.

(z) Sparkes v. Smith (1692), 2 Vern. 275.

(a) White v. Hunt (1870), L. R. 6 Ex. 32; Ringer v. Cann (1838), 3 M. & W. 343.

(b) Debenham v. Digby (1873), 28 L. T. 170.

according to the rule of ejusdem generis, general words will not pass leaseholds (c).

The doctrine of covenants running with the land applies only Lease not by to leases created by deeds (d). A mere assignment of a parol tenancy does not pass to the assignee the right to enforce, or the liability for, collateral stipulations (e). For this purpose the landlord must consent to the substitution of the assignee in the place of the original tenant, so as to create a new contract between them upon the terms of the previous tenancy (f).

COVENANTS RUNNING WITH THE LAND.

In general the burden of a covenant affecting land, but not Where coveamounting to a grant of an easement, a rent-charge, or any estate with land. or interest in the land, does not run with the land at law so as to be binding upon successive holders (g), though such covenants, so far as they are restrictive (h), bind holders who take with notice of them (i). But in this respect the relation of landlord and tenant is exceptional (k), and the burden of covenants, both restrictive and positive, entered into by a lessee, may run with the land at law. The benefit, also, of such covenants may run with the land in favour of assignees of the term.

Covenants must, in order to run with the land, have the The characfollowing characteristics, viz.: (i) they must be made with a covenantee who has an interest in the land to which they refer, and (ii) they must touch or concern the land. But a covenant may have those two characteristics, and yet not run with the land: it is in each case a question of intention, to be determined by the Court on the construction of the particular document, and with due regard to the nature of the covenant and the surrounding circumstances; the Court drawing from the circumstances the inference that the parties intended, or, in other words, holding on the true construction of the document that they contracted,

teristics of such cove-

L.T.

⁽c) Harrison v. Blackburn (1864), 17 C. B. N. S. 678.

⁽d) Standen v. Christmas (1847), 10 Q. B. 135.

⁽e) See judgment of Lush, J., in Elliott v. Johnson (1866), L. R. 2 Q. B. p. 127.

⁽f) Buckworth \forall . Simpson (1835), 1 C. M. & R. 834. See 21 Solicitors' Journal, 256.

⁽g) Austerberry v. Corp. of Oldham

^{(1885), 29} Ch. D. 750, 781.

⁽h) Austerberry ∇ . Corp. of Oldham, supra; Haywood v. Brunswick Building Society (1881), 8 Q. B. D. 403; L. & S. W. Ry. Co. v. Gomm (1882), 20 Ch. D. 562.

⁽i) Tulk v. Moxhay (1848), 2 Ph. 774.

⁽k) See judgment of Lindley, L.J., in Austerberry v. Corp. of Oldham, *supra*, at p. 781.

that the covenant should, or should not, run with the land. And there is, it is conceived, no difference between law and equity, in construing a covenant with a view of seeing whether it does or does not run with the land. The same words in the same document must necessarily bear the same meaning in every Court.

When it is said that a covenant runs with land, the expression means that the covenant is annexed to the land, and passes with it in much the same way as title-deeds, which have been quaintly called (Co. Litt. 6a) the sinews of the land (l).

Where a question arises as to whether the benefit or the burden of a covenant passes with land, alike at law and in equity the first point to be determined is whether the covenant in its inception binds the land. If it does, it is capable of passing with the land to subsequent assignees; if it does not, it is incapable of passing by mere assignment of the land (m). It must bind the land from its inception, because otherwise it would be an executory interest in land arising in futuro, and therefore obnoxious to the rules against perpetuity.

Perpetuity.

Perpetuity has no application to covenants which run with the land, because they are so annexed to the land as to create something in the nature of an interest in the land (n).

Further, when the benefit of a covenant has once been clearly annexed to a piece of land, it passes by assignment of that land, and may be said to run with it, in contemplation as well of equity as of law, without proof of special bargain or representation on the assignment. In such a case it runs, not because the conscience of either party is affected, but because the assignee has acquired something which was annexed to, or inhered in, the land assigned (o).

Where
"assigns" are
not mentioned.

Accordingly, in some cases the burden and benefit of covenants pass with the land to the assignee, although "assigns" are not mentioned in the covenants.

Where a covenant in a demise of corporeal or incorporeal (p) hereditaments relates to a thing in esse, parcel of the demise, the thing to be done by force of the covenant is quodammodo annexed and appurtenant to the thing demised, and shall go with

pp. 405, 406.
(n) Muller ∇ . Trafford, [1901] 1

Ch. 54, at p. 61.

(o) Rogers v. Hosegood, [1900] ²

Ch. at p. 407.

(p) Hooper v. Clark (1867), L. R.

(p) Hooper v. Clark (1867), L. E. 2 Q. B. 200; Martyn v. Williams (1857), 1 H. & N. 817.

⁽l) See per Farwell, J., in Rogers v. Hosegood, [1900] 2 Ch. 388, at pp. 395—397.

(m) Rogers v. Hosegood, supra, at pp. 405, 406

the land and bind the assignee, although he be not bound by express words (q). Of this kind are the following covenants:— Covenant by lessee to repair houses already built (r); to leave houses already built in repair (s); to repair and renew tenant's fixtures and machinery fixed to the premises (t); to pay rent (u)or to render services in the nature of rent (x); to allow deductions out of rent (y); not to plough more than a certain quantity of land (z); to manure the land (a); to reside upon the demised premises during the demise (b); to use a house as a private dwelling-house only (c); to insure against fire premises in London situate within the limits mentioned in stat. 14 Geo. 3, c. 78 (d); in a mining lease, to pay compensation for damage done to the surface (e); covenants by lessor for quiet enjoyment (f); and for further assurance (g); to supply the houses demised with water (h); and, in a lease of a public-house, a covenant by the lessee to buy liquor from the lessor (i), or from the landlords and their successors in business (k), and to conduct the house properly (l).

(q) Spencer's Case (1583), 5 Rep. 16 a; 1 Sm. L. C. 11th ed. 55.

(r) Dean and Chapter of Windsor's Case (1601), 5 Rep. 24; Wakefield v. Brown (1846), 9 Q. B. 209, 223.

(s) Matures v. Westwood (1598), Cro. Eliz. 599; Martyn v. Clue (1852),

18 Q. B. 661.

- (t) Williams v. Earle (1868), L. R. 3 Q. B. 739; though not similar covenants as to movable chattels on the premises at the time of the demise: S. C.
- (u) Stevenson v. Lambard (1802), 2 East, 575, 580; Parker v. Webb (circ. 1700), 3 Salk. 5; Williams v. Bosanquet (1819), 1 Br. & B. 238.

(x) Vyryan v. Arthur (1823), 1 B. & C. 410; see 2 My. & K. 541.

- (y) Baylye v. Hughes (1629), Cro. Car. 137.
- (z) Cockson v. Cock (1607), Cro. Jac. 125.
- (a) Sale v. Kitchingham (1714), 10 Mod. 158.
- (b) Tatem v. Chaplin (1793), 2 H. Bl. 133.
- (c) Wilkinson v. Rogers (1864), 2 De G. J. & S. 62. Cf. Lord Howard de Walden v. Barber (1903), 19 T.L.R. 183, where a lessee's covenant not to do or suffer anything which should

be a nuisance was held to run with the land, and to have been broken by the demised house being used for immoral purposes.

(d) Vernon v. Smith (1821), 5 B. & A. 1; on the ground that the lessor can require the insurance money to be spent in rebuilding. And so also, perhaps, as to premises not in London; see supra, p. 382, note (m).

(e) Norval v. Pascoe (1864), 34

L. J. Ch. 82.

(f) Noke v. Awder (1695), Cro. Eliz. 373, 436; Campbell v. Lewis (1820), 3 B. & A. 392. See Cole's Case (1692), 1 Salk. 196.

(y) Middlemore v. Goodale (1639),

Cro. Car. 503.

(h) Jourdain v. Wilson (1821), 4 B. & A. 266; 2 Platt on Leases, 402.

(i) Clegg v. Hands (1890), 44 Ch. D. 503. Such a covenant may materially enhance the value of the lessor's interest in the land. See Re Chandler's Wiltshire Brewing Co. and London County Council, [1903] 1 K. B. at p. 573.

(k) Manchester Brewery (o. v.

Coombs, [1901] 2 Ch. 608.

(1) Fleetwood v. Hull (1889), 23 Q. B. D. 35; White v. Southend Hotel Co., [1897] 1 Ch. 767. Further, a covenant by a lessor for renewal runs with the land, and binds the grantee of the reversion (m).

Where in a lease containing a covenant by the lessee of a public-house to take liquor from the lessor, his successors and assigns, there is a proviso for reduction of rent so long as the covenant is observed, and the reversion and the business devolve upon different persons, the lessee, since he continues bound by the covenant, is entitled to the benefit of the proviso, so long as he purchases liquor from the successors in the business (n).

Where "assigns" are mentioned.

Where a covenant relates to a thing not in esse at the time of the demise, yet if it directly touches or concerns the thing demised (o), and the word assigns is used in the covenant, the assignee will be bound by, or may take advantage of it (p). The following covenants belong to this class:—Covenant to build a wall (q), or a house (r), on the demised premises; in a mining lease, to build a smelting mill on waste land not demised, since it tends to the maintenance of the thing demised (s); to convey upon a railway, for making which land is demised, all coal got in a certain colliery (t); in a demise of the right to kill game, to leave the land at the end of the term as well stocked with game as at the time of the demise (u); not to assign without the consent in writing of the lessor (x); to deliver up at the

(m) Roe v. Hayley (1810), 12 East, at p. 469; 11 R. R. at p. 457; Muller v. Trafford, [1901] 1 Ch. at pp. 57, 60.

(n) White v. Southend Hotel Co.,

sunra.

(p) (f. Re Faucett v. Holmes (1889), 42 Ch. D. 150, where a purchaser had, in his conveyance, covenanted for himself, his heirs, &c., and assigns with the vendors, that he and his heirs, &c., and assigns would do certain acts in respect of

the purchased land, and also that he upon erecting any building on the land, would erect only buildings of a certain kind; and it was held that the alteration of wording showed a difference of intention, and that the last-mentioned covenant was a personal one only, and not binding upon an assign of the purchaser's devisees.

(q) Spencer's Case, supra. (r) Doughty v. Bowman (1848), 11

Q. B. 444.

(s) Sampson v. Easterby (1829). 9 B. & C. 505, 516; 6 Bing. 644. See Bally v. Wells (1769), 3 Wils. 25.

(t) Hemingway v. Fernandes (1842),

13 Sim. 228.

(u) Hooper v. Clark (1867), L. R. 2 Q. B. 200.

(x) Williams v. Earle (1868) L. R. 3 Q. B. 739, as explained by Blackburn, J., in West v. Dobb (1869), 38 L. J. Q. B. at p. 291; McEacharn v. Colton, [1901] A. C. at p. 106. See Doe v. Smith (1814), 5 Taunt. 795.

⁽o) Spencer's Case (1583), 5 Rep. 16 a; Thomas v. Hayward (1869), L. R. 4 Ex. 311; Mayor of Congleton v. Pattison (1808), 10 East, at p. 135; Doughty v. Bowman (1848), 11 Q. B. 444, 454. Though in Minshull v. Oakes (1858), 2 H. & N. 793, the distinction was questioned, and a covenant to repair new buildings, if erected, was held to bind assigns of the lessee though not mentioned. For a discussion of this case, see 1 Sm. L. C. 11th ed. pp. 70—72.

not run with

end of the term at a valuation fruit trees and bushes then growing (y).

If the thing to be done under the covenant be merely collateral Covenants to the land, and do not touch or concern the thing demised in any sort (z), the assignee shall not be charged (a). Hence the land. following covenants will not run with the land:—Covenant to build a house, not touching or concerning the land demised (b), upon land of the lessor which is not parcel of the demise (a); to pay a collateral sum to the lessor or to a stranger (c); to pay taxes on premises not demised (d); in a lease of ground with liberty for the lessee to erect a mill, not to hire persons to work in the mill who were settled in other parishes without a certificate of the settlement of such persons (e); covenant by lessor to give the lessee an offer of pre-emption of an adjoining piece of ground (f); in a lease of a beershop, not to build or keep any house for sale of spirits or beer within half-a-mile of the demised premises (g); condition for re-entry if the lessee or his assigns, or any occupier of the land demised, should at any time during the term be lawfully convicted of committing any offence against the game laws (h); covenant by the lessor to make a payment in respect of chattels substituted for chattels on the land at the time of the demise (i). The assignee is not liable on an agreement by the lessee subsequent to the lease to pay a percentage on the cost of additional buildings (k).

A negative bargain, such as a bargain against some particular Restrictive user of land retained on lease of part of an estate, may be expressed by any person entitled in equity to the benefit of the ground of bargain against any person bound in equity by notice of it, either express or to be imputed at the time of acquisition of his

covenants binding on notice.

- (y) Grey v. Cuthbertson (1785), 2 Chit. 482.
- (z) Thomas v. Hayward (1869), 38 L. J. Ex. at p. 176; L. R. 4 Ex. 311.
- (a) Spencer's Case (1583), 5 Rep. p. 16a.
- (b) Sampson v. Easterby (1829), 9 B. & C. 505, 516.
- (c) Mayho v. Buckhurst (1618), Cro. Jac. 438; Flight v. Glossop (1835), 2 Bing. N. C. 125 (agreement for use of boxes at theatre on payment of a collateral sum).
- (d) Gower v. Postmuster-General (1887), 57 L. T. 527.

- (e) Mayor of Congleton v. Pattison (1808), 10 East, 130. See Walsh v. Fussel (1829), 6 Bing. 163.
- (f) Collison v. Lettsom (1815), 6 Taunt. 224, 229.
- (g) Thomas v. Hayward (1869), L. R. 4 Ex. 311. Cf. Kemp v. Bird (1877), 5 Ch. D. 974.
- (h) Stevens v. Copp (1868), L. R.
- (i) Gorton v. Gregory (1862), 3 B. & 8. 90.
- (k) Lumbert v. Norris (1837), 2 M. & W. 333.

own title (1). Quite irrespectively of the question whether a covenant runs with the land at law, every holder of land (m) who takes it with notice of a previous contract affecting the user of the land, is bound to abstain from conduct which will be a violation of the contract (n), and such violation will be restrained by injunction (o). But a contract which is purely positive—which, for instance, involves the expenditure of money on repairs—will not be enforced on the ground of notice (p). Where a covenant is partly affirmative and partly negative, the negative part will in a proper case be enforced (q). A covenant giving to the lessor the exclusive right to supply beer to a public-house comprised in the lease is enforced by restraining the holder with notice from purchasing beer elsewhere (r); and the covenant may be made to extend to premises other than those comprised in the lease from the brewer, so as to bind such other premises in the hands of an assign of the covenantor (s). The covenant is also enforceable in favour of the assigns of the lessor, and it is not necessary that the assigns should carry on the business at the same place as the lessor, or should themselves make beer (t).

Building estate.

A vendor of a building estate is entitled to enforce restrictive covenants relating to the user of a part of the estate, although

(i) Holloway Brothers v. Hill, [1902] 2 Ch. at p. 616. In the same case, Byrne, J., said (at p. 617, see, too, pp. 619, 620): "I think that the authorities show that the lessee of a person bound by a restrictive covenant may be sued, whether assigns are mentioned or not." Distinguish Ashby v. Wilson, [1900] 1 Ch. 66.

(m) Although a mere occupier: Mander v. Falck, [1891] 2 Ch. 554.

(n) De Mattos v. Gibson (1858), 4

De G. & J. 276, p. 282.

(a) Tulk v. Moxhay (1848), 2 Ph. 774; Wilson v. Hart (1866), L. R. 1 Ch. 463. Keppell v. Bailey (1834), 2 My. & K. 517, so far as it is to the contrary, is overruled: Luker v. Dennis (1877), 7 Ch. D. 227; John Brothers, &c., Co. v. Holmes, [1900] 1 Ch. 188. Distinguish Formby v. Barker, [1903] 2 Ch. 539, and Re Fawcett and Holmes (1889), 42 Ch. D. 150 (covenant personal only).

(p) Supra, p. 433. (q) $Clegg \ v. \ Hands (1890), 44 \ Ch. \ D.$

503.

(r) See Catt v. Tourle (1869), L. R.

- 4 Ch. 654; also John Brothers, &c., Co. v. Holmes, [1900] 1 Ch. 188, where a covenant tying a public-house to a firm of brewers was held to run with their business, so as to be enforceable by purchasers of the business against an underlessee, with notice, of the
- (s) Luker v. Dennis (1877), 7 Ch. D. 227,
- (t) Cleyg v. Hands (1890), 44 Ch. D. 503; supra, p. 365. See, too, Manchester Brewery Co. v. Coombs, [1901] 2 Ch. 608. In this case, Farwell, J., intimated (at p. 619) an opinion that the benefit of a tenant's covenant to purchase beer from the landlords and their successors in business was a chose in action, which could have been assigned in equity before the Judicature Act of 1873, and that accordingly, the covenant could, after absolute assignment in writing and due notice given, be sued upon by the assignee. As to this, however, consider the observations of Channell, J., in Torkington v. Magee, [1902] 2 K. B. 427, at p. 433.

he has sold the whole estate, if he remains liable to the purchasers of other parts of the estate to restrain the prohibited user (u). In general, also, the purchaser of another part of the estate can enforce the covenant (v), if he purchases on the faith of it (x). In Rogers v. Hosegood (y) the rights of such a purchaser were put still higher. There a purchaser of a plot (A) of building land had entered into a restrictive covenant with the vendors (mortgagors), but not with their mortgagees; and, afterwards, the mortgagors conveyed another plot (B) of land, near to plot A, to another purchaser, who had no knowledge, when he purchased, of the existence of the above covenant. It was held that subsequent assigns of plot B could enforce the covenant against an assign of plot A.

The same principle applies to a building let out in flats under a Flats. scheme for the general management of the building, and the lessor who has let such a flat for residential purposes will be restrained from departing from the scheme by turning the rest of the building into a club (z), or into an hotel (a), or into public offices (b).

If, however, a restrictive covenant is entered into with a Personal and covenantee, but not in respect of or concerning any ascertainable collateral property belonging to him or in which he is interested, then the covenant must be regarded, so far as he is concerned, as a personal covenant, the benefit of which it is not legally permissible for him to assign. On this principle, if, upon the sale by a vendor of the whole of his land, he takes from the purchaser a covenant restricting the user of it, the covenant is merely personal and collateral, and cannot be enforced by the vendor's executor against an assign of the purchaser in respect of a breach committed after the vendor's death (c).

(u) Spencer ∇ . Bailey (1893), 69 L. T. 179.

(x) See Master v. Hansard (1876),

4 Ch. D. 718; Re Birmingham, &c., Land Co. and Allday, [1893] 1 Ch. 342.

(y) [1900] 2 Ch. 388. Distinguish Graham v. Craig, [1902] 1 Ir. R. 264.

(z) Hudson v. Cripps, [1896] 1 Ch. 265; approved, Jueger v. Mansions Consolidated (1903), 87 L. T. 690 (general scheme). Cf. Rogers v. Hosegood, supra.

(a) Alexander v. Mansions Proprietary (1900), 16 T. L. R. 431.

(b) Gedye v. Bartlett, [1900] 17 T. L. R. 43, C. A.

(c) Formby v. Barker, [1903] 2 Ch. *5*39, *5*54.

⁽v) Thornewell v. Johnson (1881), 50 L. J. Ch. 641. See Renals v. Cowlishaw (1879), 9 Ch. D. 125, 129; 11 Ch. D. 866, 869; Nottingham Brick ('o. v. Butler (1886), 15 Q. B. D. 261, 269; 16 Q. B. D. 778; Spicer v. Martin (1888), 14 App. Cas. 12. See, too, Holford v. Acton District Council, [1898] 2 Ch. 240; Webb v. Fagotti Brothers (1898), 79 L. T. 589, 683; and, as to building schemes, cf. Rowell v. Satchell, [1903] 2 Ch. 212, and Osborne v. Bradley, ib. 446.

Underlessee.

An underlessee who has parted with possession of the premises, and is no party to an unlawful use of them, is not liable in equity at the suit of the lessor (d).

Notice of restrictive covenants.

An assignee or underlessee is expected to inquire into the title of his assignor or immediate lessor (e), and he is affected with constructive notice of any restrictive covenants he will discover on such inquiry (f), notwithstanding that he is by statute precluded from the inquiry except by special agreement (g). Under such a statutory prohibition he is in the same position as if before the statute he had stipulated not to inquire into the title (g). But where inquiry would in fact not have led to knowledge of the covenant in question, the person omitting to make the inquiry is not affected with notice (h).

Effect of reassignment.

The assignee may rid himself of all future liability to the lessor in respect of the rent (i) and covenants in the original lease, by reassigning the lease to any person, though the assignee has been held liable in equity for the rent during the time he actually enjoys the land (k). He may do this without giving notice to the lessor, or obtaining his leave (l); and notwithstanding a covenant in the original lease, that the lessee, his executors or administrators, should not assign without the licence of the lessor (m). There is no fraud in the assignee of a lease reassigning his interest with a view to get rid of the lease; hence he may reassign it to a beggar (n), or a married woman (o), or a person leaving the kingdom (p), for the express purpose of relieving himself of liability under the covenants. And this may be done by a trustee in bankruptcy (q). It is not even necessary that the person to whom the reassignment is made should take possession

- (d) Hall v. Ewin (1887), 37 Ch. D. 74.
- (e) Parker v. Whyte (1863), 1 H. & M. 167.
- (f) Fielden v. Slater (1869), 7 Eq. 523.
- (g) Patman v. Harland (1881), 17 Ch. D. 353; Thornewell v. Johnson (1881), 50 L. J. Ch. 614.
- (h) Carter v. Williams (1870), L. R. 9 Eq. 678.
- (i) Paul v. Nurse (1828), 8 B. & C. 486; Odell v. Wake (1813), 3 Camp. 394; Chancellor v. Poole (1781), 2 Dougl. 764; Pitcher v. Tovey (1693), 1 Salk. 81.
 - (k) Treackle v. Coke (1683), 1 Vern.

- 164.
- (l) Valliant v. Dodemede (1742), 2 Atk. 546; Le Keux v. Nash (1745), 2 Stra. 1221; Onslow v. Corrie (1817). 2 Madd. 330.
- (m) Paul v. Nurse (1828), 8 B. & C. 486.
- (n) Taylor v. Shum (1797), 1 B. & P. 21, 23. See Odell v. Wake (1813), 3 Camp. 394.
- (o) Barnfather v. Jordan (1780), 2 Dougl. 452.
- (p) Per Eyre, C.J., in Taylor v. Shum (1797), 1 B. & P. at p. 23.
- (q) Hopkinson v. Lovering (1883). 11 Q. B. D. 92.

of the premises (r), or receive the lease (s). In one case it was held that a reassignment of a lease might be lawfully made to a prisoner in the Fleet, who was paid a sum of money to accept of the assignment (t). But the assignment must be real (u), and it is not effectual if the assignee is merely the agent of the assignor (v).

A lessee, however, cannot, by assigning his lease, rid himself Continued of liability under the covenants. The effect of an assignment liability of lessee. is to make the lessee a surety to the lessor for the assignee, who, as between himself and the lessor, is the principal, bound, while he is assignee, to pay the rent and perform the covenants running with the land (x). If the lessor, tacitly or expressly, accepts the assignee as his tenant, it appears that an action of debt for rent will not lie against the lessee (y); but if the lease contains an express covenant by the lessee, an action on that covenant may be brought against him or his executor (z) at any time during the term, notwithstanding the lessee has assigned his interest and parted with the possession of the premises, and the lessor has received rent from the assignee (a). may sue either the lessee or his assignee, or both at the same time, but he can only have execution against one of them (z).

During the continuance of the interest of each successive 2. Liability assignee there is a duty on his part to pay the rent and perform of assignee to lessee. the lessee's covenants (b). If the lessee, in his capacity of a surety as between himself and the assignee for the payment of rent and performance of covenants (c), has paid the rent or discharged the obligation, he has his remedy over against the principal (d); and he has the same remedy over against each

- (r) Walker v. Reeve (1781), 3 Dougl. 19.
- (s) See the cases cited in note (n) on p. 440.
- (t) Valliant v. Dodemede (1742), 2 Atk. 546.
- (u) Fagg v. Dobie (1838), 3 Y. & C. Ex. 96.
- (v) Philpot v. Hoare (1741), 2 Atk. 219.
- (x) See per Lord Denman in Wolveridge v. Steward (1833), 1 Cr. & M. at p. 660. Per Parke, B., in Humble v. Langston (1841), 7 M. & W. at p. 530.
- (y) Walker's Case (1587), 3 Rep. 22 a; Auriol v. Mills (1790), 4 T. R. p. 98. See Wadham v. Marlowe (1785),

- 8 East, 314, note (c); 4 Dougl. 54.
- (z) Brett v. Cumberland (1617), Cro. Jac. 521. – See Bachelour v. Gage (1631), Cro. Car. 188.
- (a) Barnard v. Godscall (1613), Cro. Jac. 309. See Auriol v. Mills (1790), 4 T. R. p. 98; Staines v. Morris (1812), 1 V. & B. p. 11; Orgill v. Kemshead (1812), 4 Taunt. 642.
- (b) See Wolveridge v. Steward (1833), 1 Cr. & M. at p. 659; Moule v. Garrett (1870), L. R. 5 Ex. 132.
- (c) Per Parke, B., in Humble v. Langston (1841), 7 M. & W. at p. 530.
- (d) Burnett v. Lynch (1826), 5 B. & C. 589. See judgment in Wolveridge v. Steward, 1 Cr. & M. at pp. 659, 660.

subsequent assignee, in respect of breaches committed during the continuance of the interest of each of them; for the lessee is in effect a surety for each of them to the lessor (e). And there is an implied promise on the part of each successive assignee to indemnify the original lessee against breaches of covenant by each assignee during his tenancy, notwithstanding that he expressly covenants to indemnify his immediate assignor (f). The assignee is liable for a breach of any covenant running with the land which is committed in his time, though the action is not commenced until after he has assigned the premises (g).

Even where there is no assignment of the lease, but only an agreement to assign not under seal, the assignee will be liable for rent to the lessee as long as he is in possession (h), though not subsequently (i). But the lessee who has been compelled to pay rent cannot recover from the assignee's mortgagee by subdemise (j).

Indemnity to lessee.

As a further protection against this continued liability, lessees, on assigning their leases, are entitled to require the assignees to indemnify them against future payment of rent and performance of covenants (k), and the assignee is, perhaps, liable on the covenant, if he takes possession, although he does not execute the assignment (l). Even executors, who cannot be compelled to enter into the ordinary covenants for title, may require a covenant of indemnity from their assignees (k). It is, however, to be borne in mind that the usual assignee's covenant, to observe and perform the lessee's covenants and to indemnify the assignor, is to be construed as if it had been prefaced by the words "with the object and intent of affording to the assignor his heirs, executors, and administrators a full and sufficient indemnity, but not further or otherwise" (m).

(e) Judgment in Moule v. Garrett (1870), 39 L. J. Ex. at p. 73; Wolveridge v. Steward (1833), 1 Cr. & M. at p. 660.

(f) Moule v. Garrett (1870), L. R. 5 Ex. 132; (1872), L. R. 7 Ex. 101.

- (g) Garrett v. Lynch (1826), 5 B. & C. 589; Harley v. King (1835), 2 Cr. M. & R. 18.
- (h) See Groom v. Bluck (1841), 2 M. & Gr. 567.
- (i) Crouch v. Tregonning (1872), L. R. 7 Ex. 88.
 - (j) Bonner v. Tottenham Building

Society, [1899] 1 Q. B. 161.

(k) Staines v. Morris (1812), 1 V. & B. 8. See Russell v. Shoolbred (1885), 29 Ch. D. 254. As to the construction of covenants of indemnity, see Crossfield v. Morrison (1849), 7 C. B. 286; Gooch v. Clutterbuck [1899] 2 Q. B. 148.

(l) Smith v. Peat (1853), 9 Ex. 161. (m) Re Poole and Clarke's Contract (1904), W. N. 133, 134 (C. A.), followed in Harris v. Boots Cash Chemists (Southern), ib. 141.

Upon a covenant of indemnity in the usual form, contained in the assignment, the assignee will be liable to the lessee during the residue of the term, and he cannot relieve himself from this liability by reassigning the lease. Substantial damages can be recovered by the lessee against the assignee in respect of a breach of a covenant to repair if the premises are found to be dilapidated at a date subsequent to reassignment, although there is no direct evidence that the breach took place in his time (n); and the lessee can recover in respect of dilapidations prior to the assignment (o), especially if by reason of them he obtained a smaller price, unless the covenant is expressly worded so as to exclude such liability (p). An assignee who has covenanted to indemnify the lessee against the covenants in the lease may, on reassigning the lease, require a similar covenant from his assignee (q). But a covenant for indemnity cannot be enforced if the assignment was for an unlawful purpose (r).

In an action by a lessee against the assignee of the lease for Claim under breach of a contract of indemnity, the lessee can recover as damages the entire costs properly incurred in reasonably, though unsuccessfully, defending an action by the lessor (s). where the extent of the liability to the lessor has already been determined in an action brought by him against the lessee, an intermediate assignee ought to pay, and cannot recover against the ultimate assignee the costs of defending an action brought by the lessee (t). The judgment will provide only for past breaches (u). The claim of the lessee for indemnity against a bankrupt assignee is liable to be barred under sect. 30 of the Bankruptcy Act, 1883 (v), unless declared by the Court to be a liability incapable of being fairly estimated (x); and hence, as against the bankrupt, the lessee must prove and will only receive But he may take an assignment from the a dividend (y). trustee in the bankruptcy of a right of indemnity which the

indemnity.

⁽n) Smith v. Peat (1853), 9 Ex. 161.

⁽o) Gooch v. Clutterbuck, supra. (p) Hawkins v. Sherman (1828), 3 C. & P. 459.

⁽q) See Staines v. Morris (1812), 1

V. & B. 8, 13.

⁽r) Smith v. White (1866), L. R. 1 Eq. 626.

⁽s) Howard v. Lovegrove (1870), L. B. 6 Ex. 43; Murrell v. Fysh (1883), C. & E. 80. See Cousins v. Phillips (1865), 3 H. & C. 892.

⁽t) Smith v. Howell (1851), 6 Ex. 730.

⁽u) Lloyd v. Dimmack (1877), 7 Ch. D. 398.

⁽v) 46 & 47 Vict. c. 52.

⁽x) Hardy v. Fothergill (1888), 13 A. C. 351. As to such a claim against a company in liquidation, see Craig's Claim, [1895] 1 Ch. 267.

⁽y) Under the Act of 1869 this liability was not provable: Morgan v. Hardy (1886), 17 Q. B. D. 770.

bankrupt has against a subsequent assignee, and he will then be able to recover in full against such subsequent assignee (z).

(5) Grant by the Landlord of his Reversion.

4 Anne, c. 16, s. 9.
Conveyances to be good without attornment of tenant.

By 4 Anne, c. 16 (a), s. 9, it is enacted that all grants or conveyances of any manors or rents, or of the reversion or remainder of any messuages or lands, shall be good and effectual without any attornment of the tenants of any such manors or of the land out of which such rent shall be issuing, or of the particular tenants upon whose particular estates any such reversions or remainders shall be expectant or depending, as if their attornment had been had or made.

Sect. 10.
Tenant not to be prejudiced by payment of rent to grantor before notice of grant.

It is, however, provided by the tenth section of the same Act that no such tenant shall be prejudiced or damaged by payment of any rent to any such grantor, or by breach of any condition for non-payment of rent, before notice shall be given to him of such grant by the grantee (b).

Formerly a grant of the reversion was not effectual without the attornment of the tenant to the grantee, though it was otherwise with a devise of the reversion (c); but under the above enactment the grant is complete without attornment (d), and the assignee of the reversion can maintain ejectment for breach of covenant without giving the tenant notice of the assignment (c). Although the lease is not under seal, the tenant becomes tenant to the assignee without attornment, and holds upon the terms of the lease under which he entered (f). But the statute only applies where an estate remains in the tenant, and the assignee of the reversion cannot sue a yearly tenant by parol who, before the assignment of the reversion, has by deed assigned all his own estate and interest (g).

Where covenants run with reversion.

At common law neither the benefit nor the burden of covenants in a lease passed to the assignee of the reversion—in other

(z) Re Perkins, Poyser v. Beyfus, [1898] 2 Ch. 182.

(a) In Revised Statutes, 4 & 5 Anne, c. 3.

(b) See Cook v. Moylan (1847), 1

Ex. 67.
(c) Doe v. Smith (1838), 8 A. & E. p. 260.

(d) See Doe v. Brown (1853), 2 E. & B. 331. Cf. Edwards v. Wickwar (1866), L. R. 1 Eq. 403, where, however, 4 Anne, c. 16, s. 9, was not referred to: 35 L. J. Ch. 309, n.

(e) Scaltock v. Harston (1875), 1 C. P. D. 106.

(f) Brydges v. Lewis (1842), 3 Q. B. 603.

(g) Allcock v. Moorhouse (1882), 9 Q. B. D. 366. words, ran with the reversion (h)—except, perhaps, covenants for the payment of rent or for the rendering of services (i); but the law was altered by 32 Hen. 8, c. 34, and the principle of that statute has been extended by the Conveyancing Act, 1881.

Under the statute of Henry the Eighth, upon a grant by a 32 Hen. 8, lessor of his reversion, the grantees "and the heirs, executors, successors, and assigns of every of them, shall and may have and enjoy like advantage against the lessees, their executors, administrators, and assigns, by entry for non-payment of the against rent (k), or for doing of waste or other forfeiture, and also shall and may have and enjoy all and every such like and the same advantage, benefit, and remedies by action only, for not performing of other conditions, covenants, or agreements contained and expressed in the indentures of their said leases, demises, or grants, against all and every the said lessees and farmers and grantees, their executors, administrators, and assigns, as the said lessors or grantors themselves, or their heirs or successors ought, should, or might have had and enjoyed at any time or times."

And by the second section of the same statute it is further Sect. 2. enacted that all lessees of manors, lands, tenements, or other Lessees to hereditaments "for term of years, life or lives, their executors, remedy administrators, and assigns, shall and may have like action, advantage, and remedy against all and every person and persons reversion as and bodies politic, their heirs, successors and assigns, which have or shall have any gift or grant of our Sovereign Lord the King, or of any other person or persons, of the reversion of the same manors, lands, tenements, and other hereditaments so letten, or any parcel thereof, for any condition, covenant or agreement contained or expressed in the indentures of their lease and leases, as the same lessees or any of them might and should have had against their said lessors and grantors, their heirs and successors; all benefits and advantages of recoveries by reason of any warranty by deed or in law by voucher or otherwise only excepted."

This statute of Henry the Eighth applies only to cases where

underlease has been granted, see Franklin v. Howes (1871), 24 L. T. 348. As to sums reserved in respect of a wayleave, see Lord Hastings v. North Eastern Ry. Co., [1898] 2 Ch. 674; affd., [1899] 1 Ch. 656; and, in H. L. (sub nom. North Eastern Ry. Co. v. Lord Hastings), [1900] A. C. 260.

c. 34, s. 1. Grantees of reversion to have same remedies lessees as lessors had.

have same against grautees of they might have had against lessors.

⁽h) 1 Smith's L. C. 11th ed. 61; Rogers v. Hoseyood, [1900] 2 Ch. at p. 395; Muller v. Trafford, [1901] 1 Ch. at p. 61.

⁽i) Vyvyan v. Arthur (1823), 1 B. & C. 410.

⁽k) As to the effect of the assignment of a term out of which an

the lease is made by deed (l), and where the conditions or covenants touch or concern the land, so that, according to the rule already explained (m), they can run with the land for or against the lessee (n). Further, "the reversion" mentioned in the statute means the reversion which the lessor has in him at the date at which he grants the lease (o). If the lease is not under seal, the assignee of the reversion is not bound by its terms unless he has adopted them (p), as if with knowledge of the lease he receives rent (q); and, on the other hand, he does not take the benefit of the agreement, the right to sue on it remaining in the lessor (r). An agreement that the rent shall not be raised, or otherwise varying the rights of the parties, may be personal merely, and not binding on a purchaser of the reversion, whether with or without notice (s).

A covenant can run under the statute with the reversion on a term in incorporeal hereditaments (t). A covenant by the lessee, in a lease of sporting rights, to leave the land at the end of the term as well stocked with game as at the time of the demise, touches the hereditaments demised, and the assignee of the reversion can sue on it (u).

Liability of lessor.

It is, however, to be observed that, where, in a lease for years under seal, a lessor has entered into an express covenant which runs with the reversion, the lessor remains liable on the covenant after and notwithstanding assignment of the reversion. The position of a lessor with respect to covenants running with the reversion is now precisely similar to the position of a lessee with respect to covenants running with the lease. In neither case is liability extinguished by assignment (x).

(l) Standen v. Christmas (1847), 10 Q. B. 135.

(m) Supra, p. 433. See Fleetwood v. Hull (1889), 23 Q. B. D. 35. As to covenants to take liquor from the lessor, see cases cited supra, p. 365.

(n) Spencer's Case (1583), 5 Rep. 18 a (ad finem); Stevens v. Copp (1868), L. R. 4 Ex. 20.

(o) Muller v. Trafford, [1901] 1 Ch. at p. 62.

(p) Smith v. Eggington (1874), L. R. 9 C. P. 145.

(q) Cornish v. Stubbs (1870), L. R. 5 C. P. 334; but an agreement by the lessor in an agricultural letting to pay the outgoing tenant for his

property on the farm attaches to the owner for the time being: Maned v. Norton (1883), 22 Ch. D. 769.

(r) Bickford v. Parson (1848), 5 C. B. 920, see p. 932.

(s) Roberts v. Tregaskis (1878), 38 L. T. 176; Phillips v. Miller (1875), L. R. 10 C. P. 420.

(t) Martyn v Williams (1857), 1 H. & N. 817, 829; Lord Hastings v. N. E. Ry. Co., [1898] 2 Ch. 674; affd., [1899] 1 Ch. 656; and in H. L. (sub nom. N. E. Ry. Co. v. Lord Hastings), [1900] A. C. 260.

(u) Hooper v. Clark (1867), L. R. 2 Q. B. 200.

(x) Stuart v. Joy, C. A., [1904] 1

Where land which is in the occupation of a tenant is sold, the Notice to the purchaser is bound to make inquiry as to the nature and extent purchaser of terms of of the tenant's interest (y). He has, therefore, constructive tenancies. notice of the terms upon which the land is occupied (z); and the tenant holds under the purchaser on the same terms (a), and has against the purchaser the benefit of an option of renewal contained in his agreement (b). And this rule extends to a stipulation which is imported by a contract independent of the lease (y), unless it is merely personal (c). But the rule does not apply as between vendor and purchaser, and the vendor cannot enforce the contract if it turns out that a person stated to be a tenant has such a lease as will defeat the object of the purchaser (d).

Where land which is subject to a lease is taken by a public Land taken company under its statutory powers, the company is not liable under statutory powers. on the lessor's covenants for doing upon the land, in pursuance of such powers, acts which are in violation of the covenants (e). The proper course is for the lessee to make a claim under sect. 68 of the Lands Clauses Act, 1845, on the ground that his premises have been injuriously affected, and this he can do whether the lands have been taken compulsorily or by agreement (f).

In Re Masters and Great Western Railway Co. (g), a mining Re Masters lease had been granted, containing a proviso that the lessee and G. W. R. might at any time during the term sink a pit in any part of the lessor's land the surface of which was not demised, but so that the position of such pit should be subject to the reasonable approval of the lessor, his heirs or assigns. A railway company having afterwards compulsorily taken from the lessor five acres of the surface land, it was held that the lessee had a substantial interest under the proviso, which entitled him to compensation,

K. B. 362, 368, following a dictum of Lord Macnaghten in Eccles v. Mills, [1898] A. C. 360, at p. 371.

(y) Allen v. Anthony (1816), 1 Mer. 282.

(z) Daniels v. Davison (1809), 16 Ves. 249; Coates v. Kenna (1872), Ir. R. 6 Eq. 401.

(a) Greenwood v. Bairstow (1836), 5 L. J. Ch. 179.

(b) Lewis v. Stephenson (1898), 78 L. T. 165. See Richardson v. Sydenham (1703), 2 Vern. 447.

(c) Supra, p. 446.

(d) Caballero v. Henty (1874), L. R.

9 Ch. 450; overruling James v. Lichfield (1869), L. R. 9 Eq. 51.

(e) See Baily v. De Crespigny (1869), L. R. 4 Q. B. 180; Anderson v. M. S. & L. Ry. Co. (1898), 46 W. R. 509; affd., [1898] 2 Ch. 394.

(f) Kirby v. Harrogate School

Board, [1896] 1 Ch. 437.

(y) C. A., [1901] 2 K. B. 84; affirming, [1900] 2 Q. B. 677. The question whether the company were "assigns" of the lessor within the meaning of the proviso was raised, but not decided, in the C. A.

under the above sect. 68, for being prevented by the company's taking and occupation of the surface from exercising the right of

Covenants run with reversionary estate.

sinking a pit there. Under the stat. 32 Hen. 8, c. 34, it was necessary that the reversioner claiming the benefit of the covenant should be strictly the assignee of the legal owner with whom the covenant was

Conv. Act, 1881, s. 10.

Sect. 11.

made (h), though in the case of copyholds a surrenderee was treated as an assignee (i). Thus, in a lease by a mortgagor and mortgagee, the assigns of the mortgagee could not take advantage of covenants entered into with the mortgagor only (k), the right to sue remaining in the mortgagor (l). The difficulty also arose in cases where a remainderman sought to enforce a covenant contained in a lease made by the tenant for life under a power of leasing, though it was got over by treating the settlor from whom the power emanated as the real lessor, and the remainderman as his assignee (m). The necessity, however, for this strict tracing of the legal estate has been abolished by the Conveyancing Act, 1881, which by sect. 10 provides that the rent and the benefit of the lessee's covenants, and every condition of re-entry, shall go with the reversionary estate, and shall be enforceable by the person entitled, subject to the term, to the income of the land leased. The section applies where there has been a severance of the reversionary estate, and then the owner of each part of the estate takes the advantage of the rent, covenant and conditions so far as they relate to his part (n). The 11th section of the same Act enacts that the obligation of a covenant entered into by a lessor "with reference to the subject-matter of the lease" shall, if and so far as the lessor has power to bind the reversionary estate immediately expectant on the term granted by the lease, be "annexed and incident to" and shall go with that reversionary

(h) See E. of Derby v. Taylor (1801), 1 East, 502.

the covenants in the lease must show what reversion he has. and how he derives title to it: Davis v. James (1884), 26 Ch. D. 778. A demise by deed for a term longer than that of an existing tenancy transfers the reversion on the existing tenancy, and disentitles the original lessor to sue the original lessee for rent: Harmer v. Bean (1853), 3 C. & K. 307. As to lessors who are tenants in common suing separately, see Roberts v. Holland, [1893] 1 Q. B. 665.

⁽i) Whitton ∇ . Peacock (1834), 3 My. & K. 325; Glover v. Cope (1692), 3 Lev. 326; 4 Mod. 80.

⁽k) Webb v. Russell (1789), 3 T. R. **393.**

⁽¹⁾ Russell v. Stokes (1791), 1 H. Bl. 562.

⁽m) Isherwood v. Oldknow (1815), 3 M. & S. 382; Greenaway v. Hart (1854), 14 C. B. 340. See Whitlock's Case (1609), 8 Rep. p. 71 a.

⁽n) A plaintiff suing the lessee on

estate, and may be enforced by the person in whom the term is from time to time vested; and that, if and in so far as the lessor has power to bind the person from time to time entitled to that reversionary estate, the obligation may be enforced against any person so entitled (o). This section, however, in no way alters, it is conceived, the old law as to the class of covenants the burden of which will run with the reversion (p). These two sections of the Act of 1881 apply only to leases made after 31st December, 1881.

Under the stat. 32 Hen. 8, c. 34, the assignee of the reversion Apportionin part of the demised land was entitled to take advantage of a covenant (q), though not of a condition of re-entry, this not being apportionable by the act of the party (r). But an assignee of part of the reversion—as an assignee for years—could take advantage alike of covenants and conditions (s). A condition for non-payment of rent was made apportionable by 22 & 23 Vict. c. 35, s. 3, and by sect. 12 of the Conveyancing Act, 1881, conditions are now made apportionable generally, and the apportioned parts go respectively with the terms attached to the severed parts of the reversionary estate.

conditions.

The assignee of the reversion is not entitled under 32 Hen. 8, Cause of c. 34, to arrears of rent which became due before the assignment (t), or to sue for a breach of covenant committed before ment. the assignment (u). But upon a covenant to repair on notice, if it is the assignee who gives notice, he may sue, although the premises were out of repair before the assignment (x). And though the assignee cannot sue for a breach of a contract to

action arising before assign-

- (o) As to whether the ultimate liability, in the case where the reversion has devolved upon death, is upon the devisees of the reversion or upon the personal estate of the deceased reversioner, see Eccles v. Mills, [1898] A. C. 360.
- (p) See per Cozens-Hardy, L.J., in Davis v. Town Properties, &c., Corporation, [1903] 1 Ch. at p. 805.
- (q) Twynam v. Pickard (1818), 2 B. & A. 105; Badeley v. Vigurs (1854), 4 E. & B. 71; Attoe v. Hemmings (1615), 2 Bulstr. 281.
- (r) Dumpor's Case (1583), 4 Rep. 119; 1 Sm. L. C. 11th ed. 32. See Co. Litt. 215 a; Wright v. Burroughes (1846), 3 C. B. 685.
 - (s) Wright v. Burroughes, supra.

L.T.

- See Taite v. Gosling (1879), 11 Ch. D. 273.
- (t) Flight v. Bentley (1835), 7 Sim. So a judgment creditor on taking the land on elegit is not entitled to rent due before the execution is complete: Sharp ∇ . Key (1841), 8 M. & W. 379.
- (u) Johnson v. St. Peter's, Hereford (1836), 4 A. & E. 520; Crane v. Batten (1854), 23 L. T. O. S. 220; Cohen v. Tannar, C. A., [1900] 2 Q. B. 609. See Morris v. Kennedy, [1896] 2 Ir. R. 247. And as to the persons entitled to sue after assignment, see Green v. James (1840), 6 M. & W. 656.
- (x) Mascal's Case (1587), 1 Leon. **62.**

complete premises within a given time, where the breach was incurred before the assignment, he can sue on a covenant to keep them in repair (y).

SECT. II.—INVOLUNTARY ASSIGNMENTS.

(1) On Death.

1. Of lessor.

Arrears of rent accrued and payable in the lifetime of the landlord go to his executor or administrator as part of his personal estate (z). Executors may sue upon any covenant with their testator which has been broken in his lifetime (a). But subject to the provisions of the Land Transfer Act, 1897 (b), where the covenant runs with the land and descends to the heir, though there may have been a formal breach in the ancestor's lifetime, yet if the substantial damage has taken place since his death, the heir is the proper plaintiff (c). In the first instance, however, the real estate of a deceased person now vests in his personal representatives, and while it remains so vested it is for them to pursue the remedies incident to existing leases (b).

2. Of lessee.

Upon the death of a tenant from year to year (d), or for a term of years, the lease vests in his executor or administrator (e). Even where a term of years is specifically bequeathed, it will, in the first instance, vest in the executor, by virtue of his office, for the usual purposes to which the testator's assets are applied, and the legatee has no right to enter without the executor's special assent (f).

Executor's assent.

The executor's assent to a bequest of the term vests the term absolutely in the legatee so that he may recover it in an action at law (g); and, after an unconditional assent, the executor is not entitled to an indemnity out of the testator's general estate in respect of the covenants in the lease (h). An assent by an

(y) Bennett v. Herring (1857), 3 C. B. N. S. 370.

(z) See 1 Williams on Exors. 9th ed. 727; *Dollen* v. *Batt* (1858), 4 C. B. N. S. 760.

(a) Raymond v. Fitch (1835), 2 Cr. M. & R. 588, 598; Ricketts v. Weaver (1844), 12 M. & W. 718.

(b) Supra, p. 61.

(c) Kingdon v. Nottle (1813), 1 M. & S. 355. See 2 Cr. M. & R. 598.

(d) Doe v. Porter (1789), 3 T. R. 13; James v. Deun (1808), 15 Ves. at p. 241; Doe v. Wood (1845), 14 M. & W. 682.

- (e) Ackland v. Pring (1841), 2 M. & Gr. p. 952. See R. v. Inhabitants of Great Glenn (1833), 5 B. & Ad. 188. As to recovery from a stranger of rents of leasehold property received by him in the testator's lifetime, see Wilkinson v. Cawood (1797), 3 Anst. 905.
- (f) 1 Williams on Exors. 9th ed. 600.
- (g) Doe v. Guy (1802), 3 East, 120; Re Culverhouse, [1896] 2 Ch. 251.

(h) Shadbolt v. Woodfall (1845), 2 Coll. 30.

executor who does not prove the will is effectual, provided administration with the will annexed is afterwards taken out (i).

The assent need not be express. An implied assent is Evidence of effectual (k), but the evidence of assent must be affirmative. The mere lapse of time, or the fact that debts are paid, is not The principle is that if an executor, in his manner sufficient (l). of administrating the property, does any act which shows he has assented to the legacy, that is taken as evidence of assent; but if his acts are referable to his character as executor, they are not evidence of an assent to the legacy (m).

Payments made by the executor for the benefit of the legatee of leaseholds, but not specifically on account of the rents, are not, in the absence of representations to the legatee, sufficient evidence of assent (n). Where, on the other hand, the executor pays the rent and charges it to the legatee, this is evidence of assent (o); and where the legatee is let into possession, and assumes the burdens of the lease, there is held to have been an assent (p). The executor may assent to a bequest of leaseholds as part of a residue, without assenting to the bequest of the whole residue (p).

Where the bequest is to the executor himself, either absolutely Bequest to or for life, he still takes as executor in the first instance, and assent is necessary to complete his title as legatee (q). An entry and enjoyment by the executor, accompanied by an act of beneficial ownership, such as disposing of the term by will, shows his election to take as legatee (r). And so, too, the payment of a sum of money charged on the term in the hands of the legatee (s); or the discharge of duties attached to the bequest, such as the maintenance and education of children (t). Where the bequest is to the executor absolutely, his mere entry gives assent; but where he takes for life, something more than entry is required (u).

The executor or administrator cannot, speaking generally, Executor's refuse the lease, though it be worth nothing, for he must lease.

```
(i) Johnson v. Warwick (1856), 17
C. B. 516.
```

⁽k) Doe v. Sturges (1816), 7 Taunt. 217.

⁽l) Hawkins v. Williams (1862), 10 W. R. 692.

⁽m) Doe v. Sturges, 7 Taunt. p. 223.

⁽n) Thorne v. Thorne, [1893] 3 Ch. 196.

⁽o) Doe v. Mabberley (1833), 6 C. & P. 126.

⁽p) Austin v. Beddoe (1893), 41 W. R. 619.

⁽q) Young v. Holmes (1718), 1 Str.

⁽r) Fenton ∇ . Clegg (1854), 9 Ex. **680.**

⁽s) Young ∇ . Holmes, supra.

⁽t) Paramour v. Yardley (1579), Plowd. 539.

⁽u) Doe v. Sturges (1816), 7 Taunt. 217, p. 221.

renounce the executorship in toto or not at all (x); but if the value of the land is less than the rent, and there is a deficiency of assets, he may waive the lease (y).

The executor or administrator of a deceased tenant is liable, to the extent of the assets, for arrears of rent accruing and breaches of covenant committed during the life of the tenant (z).

With respect to rent accruing due and breaches of covenant committed after the death of the tenant, the liability of the executor depends upon special considerations.

An executor, even though merely an executor de son tort (a), takes as assignee; but, unlike other assignees, who are liable to the lessor before entry (b), the executor is only liable as assignee after he has entered and actually taken possession of the demised premises (c). But he may be sued as assignee simply, and it is for him specially to plead his non-entry (d). When he is sued and cannot make use of the plea of non-entry, he is primâ facie liable for rent due and breaches of covenant committed subsequently to the death of the lessee, and this liability must be satisfied de bonis propriis (e). So, where executors by occupying and paying rent become yearly tenants, they are under an implied agreement to abide by the terms of the original contract (f). Where, however, the executor is sued as executor, judgment will only be de bonis testatoris whether for rent (g), or for breach of covenant generally (h); and hence plene administravit will be a good Specific performance of a covenant in a lease to plea (h). take a renewed lease will be decreed against the lessee's executors who have entered and who admit assets; but the

Executor's liability.

i. For rent and breaches during life of testator.

ii. After

Entry necessary to make executor liable.

death of

(x) Per Denman, C.J., in Rubery v. Stevens (1832), 4 B. & Ad. at p. 244.

(y) 2 Williams on Exors. 9th ed. 1637. See *Wilkinson* v. Cawood (1797), 3 Anst. 905, per Macdonald, C.B., at p. 909; Stephens v. Hotham (1855), 1 K. & J. 571, p. 575.

(z) 2 Williams on Exors. 9th ed. 1632.

(a) Paull v. Simpson (1846), 9 Q.B. 365; Williams v. Heales (1874), L. R. 9 C. P. 177.

(b) Walker v. Reeve (1781), 3 Dougl. 19; Williams v. Bosanquet (1819), 1 Br. & B. 238. Where one of two executors enters, the other is not by such entry made liable for use and occupation: Nation v. Tozer (1834), 1 Cr. M. & R. 172.

(c) Rendall v. Andreæ (1892), 61 L. J. Q. B. 630; Kearsley v. Oxley (1864), 2 H. & C. 896, p. 904. See Helier v. Casebert (1664), 1 Lev. 127; Howse v. Webster (1608), Yelv. 103.

(d) Wollaston v. Hakewill (1841), 3 M. & Gr. 297, 321; Green v. Listowell (1840), 2 Ir. L. R. 384.

(e) Tilney v. Norris (1701), 1 Ld. Raym. 553; Buckley v. Pirk (1711), 1 Salk. 316.

(f) Buckworth v. Simpson (1835). 1 Cr. M. & R. 834.

(g) Buckley v. Pirk, supra; Lyddall v. Dunlapp (1742), 1 Wils. 4. See Hargrave's Case (1600), 5 Rep. 31 s.

(h) Wilson v. Wigg (1808), 10 East, 313.

renewed lease, if not beneficial, will be so framed as not to impose personal liability on the executors (i).

But though the executor is sued as assignee, and prima facie How executor is liable personally, yet by pleading specially he can discharge liability. himself, if the demised premises are of less value than the rent. If the land is of greater value than the rent, the lessor is entitled to be paid out of the profits, and the executor cannot discharge himself by a plea of plene administravit (k). But if the rent is of greater value than the land, the executor may exonerate himself by pleading this fact specially (l), and he can limit his personal liability for rent to the yearly value of the premises (m)—that is, the amount of rent for which they could have been let(n). it seems that he cannot after entry limit his liability for breaches of other covenants than the covenant to pay rent, such, for example, as the covenant to repair (o).

The result is that the executor may be sued as assignee for rent due and breaches of covenant committed subsequently to the death of the lessee; but he can discharge himself from all personal liability by alleging that he is not otherwise assignee than by being executor or administrator of the lessee, and that he has never entered or taken possession of the demised premises; and if he has entered, he can, by pleading that the yearly value of the premises is less than the rent reserved, limit his liability for rent to the amount of such yearly value. If he is sued as executor, he may discharge himself by alleging that the term is of no value, and that he has fully administered all the assets which have come to his hands (p). The lessor is not entitled to have the assets impounded to answer the future rent and covenants (q).

When an executor is sued for use and occupation in his own Use and right, he must show that his occupation is as executor, and that

occupation.

⁽i) Stephens ∇ . Hotham (1855), 1 K. & J. 571.

⁽k) Buckley v. Pirk (1711), 1 Salk. 316.

⁽I) Buckley v. Pirk, supra; Billinghurst v. Speerman (1696), 1 Salk. 297. (m) Rendall v. Andreæ (1892), 61 L. J. Q. B. 630. See 1 Wms. Saund. 112, note (c); Rubery v. Stevens (1832), 4 B. & Ad. 241, 245;

Hopwood v. Whaley (1848), 6 C. B. 744; Hornidge v. Wilson (1840), 11 A. & E. 645.

⁽n) Hopwood v. Whaley, supra; E. of Strathmore v. Vane (1887), 37 Ch. D. 128.

⁽o) Rendall v. Andreæ (1892), 61 L. J. Q. B. 630; Tremeere v. Morison (1834), 1 Bing. N. C. 89, 97; Sleap v. Newman (1862), 12 C. B. N. S. 116. See Reid v. Tenterden (1833), 4 Tyr. 111.

⁽p) Wollaston v. Hakewill (1841), 3 M. & G. p. 321.

⁽q) King v. Malcott (1852), 9 Hare, 692.

he entered in that character; that he has no assets, and that the value of the land is not equal to the rent. Where the land yields some profit, but less than the rent, he may tender the amount of profit and plead a tender, or he may pay it into Court(r).

Assignment by executor.

The executor can, like any other assignee, free himself from personal liability for future rent and breaches of covenant by assigning the term (s), though, if the testator was the original lessee, the assets in his hands remain liable (t). Moreover, by following the course provided by 22 & 23 Vict. c. 35, s. 27 (u)—i.e., by satisfying all liabilities accrued due and claimed, and setting apart a sufficient fund to answer any future claim in respect of any fixed sum covenanted to be laid out on the property—he can by such assignment avoid liability for all claims which have not then been made.

The estate of the lessee remains liable notwithstanding that the lessee has assigned in his lifetime and the lessor has received rent from the assignee (x). But where the testator was himself an assignee of the lease, the executor can terminate the liability of the estate by assigning, and it seems that if the rent exceeds the yearly value it is his duty to attempt to do so (y). The executor of the assignee can plead plene administrarit to an action by the lessee for indemnity (z).

Liability for noninsurance. The executor is not personally liable for the consequences of neglect to insure in pursuance of a covenant, where the insurance expired in the testator's life (a).

(2) On Bankruptcy of Lessee.

Liability of trustee.

Under the Bankruptcy Act, 1883 (b), leaseholds forming part of a bankrupt's own property at the date of the bankruptcy vest

(r) Patten v. Reid (1862), 6 L. T. 281.
(s) Taylor v. Shum (1797), 1 B. & P.
21; Goodland v. Ewing (1883), C. & E.
43, see note p. 44.

(t) Helier v. Casebert (1664), 1 Lev. 127; 1 Sid. 266; Coghil v. Freelove (1691), 3 Mod. 325; Pitcher v. Tovey (1692) 4 Mod. 71, 76.

(u) Since this statute it appears that the indemnity to which an executor was formerly entitled in respect of leaseholds (see King v. Malcott (1852), 9 Hare, p. 695) has become unnecessary. See 2 Williams on Executors, 9th ed. 1204, note (l); Dodson v. Sammell (1861), 1 Dr. & Sm. 575.

(x) Brett v. Cumberland (1619), Cro. Jac. 521. See Bachelour v. Gayr (1631), Cro. Car. 188. On a lease to lessees jointly with a joint and several covenant for rent, the estate of a deceased lessee remains liable, notwithstanding that his interest has ceased: Burns v. Bryan (1887), 12 App. Cas. 184.

(y) Rowley v. Adams (1839), 4 M. & Cr. 534.

- (z) Collins v. Crouch (1849), 13 Q. B. 542.
- (a) Fry v. Fry (1859), 27 Beav. p. 146.

(b) 46 & 47 Vict. c. 52. See sects. 54, 168; and generally, as to

absolutely in the trustee, subject to the power of disclaiming under sect. 55. This result does not depend upon the election of the trustee to take them (c), nor is it prevented by a restriction on assignment (d). Hence the trustee, as an assign of the lease, is personally liable under the covenants as from the date when the lease vests in him: that is, from the date of his appointment (c). Like any other assignee, he can put an end to his liability by assigning the premises over (e); and, provided the assignment is real, he may assign to a pauper for the express purpose of ridding himself of liability (f). The trustee may avoid future liability by assignment, notwithstanding that the lease contains a covenant against assigning without licence which purports to bind assignees in law (g). A release of the trustee under sect. 82 of the Act will secure him against any claim made by the landlord in the bankruptcy, but not, perhaps, against claims prosecuted in any other jurisdiction (h). The trustee is entitled to be indemnified out of the estate of the bankrupt (i).

An option to call on the landlord to grant a lease passes, on the bankruptcy of the tenant, to the trustee, and may be assigned over by him (k). The bankrupt is entitled to dispose Afterof leasehold property acquired by him after the bankruptcy and acquired before his discharge, until the trustee intervenes to claim it (l).

Under sect. 55 of the Bankruptcy Act, 1883, the trustee Disclaimer. may disclaim property of the bankrupt consisting of "land of any tenure burdened with onerous covenants," or "unjustifiable contracts," by writing signed by him, at any time within twelve months (m) after the first appointment of a

bankrupt lessees and disclaimer by 11 Q. B. D. 92; Onslow v. Carrie their trustees in bankruptcy, see Williams' Bankruptcy, 8th ed., by E. W. Harsell, pp. 271—280.

(c) Wilson v. Wallani (1880), 5 Ex. D. 155, 163; Titterton v. Cooper (1882), 9 Q. B. D. 473. But the trustee is not liable for any rent which accrued due before his appointment: ib.; and Stein v. Pope, [1902] 1 K. B. at p. 599. See, too, Expurte Dressler (1878), 9 Ch. D. 252.

(d) Doe v. Smith (1814), 5 Taunt. 795; Doe v. Bevan (1815), 3 M. & S. 353. See Wadham v. Marlowe (1785), 8 East, 314, note (c).

(e) See Wilkins v. Fry (1816), 1 Mer. p. 265.

(f) Hopkinson v. Lovering (1883),

(1817), 2 Madd. 330.

(g) Re Johnson (1894), 70 L. T.

(h) Ex parte Carter (1878), 8 Ch. D. 731; Ex parte Barnard (1882), 46 L. T. 824.

(i) Lowrey v. Barker (1880), 5 Ex. D. p. 173.

(k) Buckland v. Papillon (1866), L. R. 2 Ch. 67.

(l) Re Clayton and Barclay's Contract, [1895] 2 Ch. 212.

(m) Bankr. Act, 1890, s. 13. The period may be extended by the Court: ib.; some good reason being shown: Re Price (1884), 13 Q. B. D. 466.

trustee (n), or where the property does not come to the knowledge of the trustee within one month after such appointment, at any time within twelve months after he becomes aware of it (o). This enactment enables the trustee to get rid of the bankrupt's leaseholds, but does not entitle him to disclaim a contract by the bankrupt for the sale of his leasehold property without disclaiming the lease (p). A Crown lease can be disclaimed (q). The trustee can disclaim, notwithstanding that the lease has been determined by expiration of time or by forfeiture between his appointment and the disclaimer; and, perhaps, also, where it has been determined before his appointment (r). The disclaimer should be signed by the trustee in person (s).

Refect of disclaimer.

The disclaimer operates to determine, as from the date of disclaimer, the rights, interests, and liabilities of the bankrupt and his property in, or in respect of, the property disclaimed; and also discharges the trustee from all personal liability in respect of the property disclaimed as from the date when the property vested in him; but does not, except so far as is necessary for the purpose of releasing the bankrupt and his property and the trustee from liability, affect the rights or liabilities of any other person (t). Indeed, as a general rule, bankruptcy does not affect the rights and liabilities of persons not parties to the bankruptcy, except so far as may be necessary in the interests of the trustee and creditors and the administration of the bankrupt's estate in bankruptcy (u).

(n) Bankr. Act, 1883, s. 55, subsect. (1).

tract of sale by bankrupt, see Re Maughan (1885), 14 Q. B. D. 956; Ex parte Edmonds (1883), 48 L. T. 77. Where the bankrupt has mortgaged, see Re Gee (1889), 24 Q. B. D. 65; and cf. Re Wilson (1871), 13 Eq. 186.

 (γ) Re Bastable, Ex parte the Trustee, [1901] 2 K. B. 518, 525. Cf. Pearce v. Bastable's Trustee in Bankruptcy, [1901] 2 Ch. 122.

(q) Re Thomas (1888), 21 Q. B. D.

380.

(r) Ex parte Dyke (1882), 22 Ch. D. 410. See Ex parte Paterson (1879), 11 Ch. D. 908.

(8) Wilson v. Wallani (1880), 5 Ex. D. 155. But see Re Whitley Partners (1886), 32 Ch. D. 337.

(t) Sect. 55, sub-sect. (2). This (o) For the effect of a prior con- provision states explicitly the construction placed on sect. 23 of the Bankruptcy Act, 1869: Ex parte Walton (1881), 17 Ch. D. 746; Hill v. E. & W. India Dock Co. (1884), 9 App. Cas. 448 (where an assignee became bankrupt, and the liability of the original lessee was held to remain, notwithstanding trustee's disclaimer).

(u) Per Romer, L.J., in Stein v. Pope, [1902] 1 K. B. at p. 599. In that case a lessee assigned the lease to the defendant by a deed which was an act of bankruptcy, on which the lessee was afterwards adjudicated bankrupt. Before the adjudication the reversioners sued the defendant for rent which had become due since

In Stacey v. Hill (x), Hill had become surety for the rent surety. payable by Chapman under a lease. Chapman became bankrupt, and his trustee disclaimed the lease. It was held by the Court of Appeal that Hill's liability, as surety, to the lessor ceased upon the determination of the lease by the disclaimer.

Under the disclaimer the trustee gives up to the lessor the Other conseentirety of the property comprised in the demise. Hence, if land quences of disclaimer. and chattels are leased at an entire rent, the trustee cannot retain the chattels under the reputed ownership clause (y). And since the lease is at an end so far as the bankrupt and his estate are concerned, the trustee cannot take advantage of provisions relating to the determination of the tenancy (z); thus he cannot remove trade buildings and machinery under a provision authorizing such removal (a), unless the Court permits the removal under sub-sect. (3). But the trustee cannot rely upon the disclaimer as justifying acts which he has previously committed in violation of the tenant's obligations, as the removal of hay, where this is forbidden by the custom of the country (b). In general, however, the disclaimer relieves the trustee from all liability (c), and he is not liable for rent prior to the disclaimer, either as assignee, or on an implied contract of tenancy, or as trespasser (d).

Where a sum becomes due from the landlord to the tenant for Set-off. allowances at the determination of the tenancy, the landlord cannot, as against the trustee, set off arrears of rent accrued due before the bankruptcy (e); unless, indeed, by the custom of the country, the landlord pays only the amount of the valuation less arrears of rent (f). Similarly the landlord cannot set off sums due for breaches of covenant by the bankrupt (g).

the assignment; but the trial did not take place until after adjudication and disclaimer of the lease by the trustee in bankruptcy. It was held by the C. A. that the defendant was liable to pay the rent sued for, although the adjudication related back to the act of bankruptcy.

(x) [1901] 1 K. B. 660, 664. Distinguish Harding v. Preece (1882), 9 Q. B. D. 281, which was a case under the Bankruptcy Act, 1869.

(y) Ex parte Allen (1882), 20 Ch. D. 341.

(z) Ex parte Dyke (1882), 22 Ch. D. 410.

(a) Ex parte Glegy (1881), 19 Ch. D. 7. See Ex parte Stephens (1877), 7 Ch. D. 127.

(b) Schofield v. Hincks (1888), 58 L. J. Q. B. 147.

(c) Ex parte Allen (1882), 20 Ch. D. 341.

(d) Lowrey v. Barker (1880), 5 Ex. D. p. 173; Gabriel v. Blankenstern (1884), 13 Q. B. D. 684.

(e) Alloway v. Steere (1882), 10 Q. B. D. 22.

(f) Re Wilson (1893), 62 L. J. Q. B. **628.**

(g) Ex parte Dyke (1882), 22 Ch. D. **410.**

Leave to disclaim.

Save in cases prescribed by general rules, the trustee cannot disclaim without the leave of the Court, and the Court can impose terms as to fixtures and other matters arising out of the tenancy (h). The cases so prescribed are as follows:—(1) Cases where the bankrupt has not sublet or mortgaged, and (a) the rent is less than 20L, or (b) the estate is being administered under sect. 121 of the Act, or (c) the lessor does not, upon notice to disclaim being served upon him, require the matter to be brought before the Court; and (2) where the bankrupt has sublet or mortgaged, and neither the lessor nor the sublessee or mortgagee, upon notice to disclaim being served upon them, requires the matter to be brought before the Court (i).

Terms of disclaimer.

In such cases, since the trustee disclaims without leave, there is no opportunity for terms to be imposed on him, and he cannot be called upon to pay rent to the lessor, notwithstanding that he may have been in beneficial occupation of the premises for the purpose of the bankruptcy (k). But where the Court grants leave to disclaim, and the trustee's occupation has resulted in benefit to the bankrupt's estate (l), or, although no actual benefit has resulted, if the occupation was with a view to benefit (m), the trustee is required, as a condition of disclaiming, to pay rent in respect of the occupation (n). Under the Act of 1869 the disclaimer was valid as between the trustee and the lessor, notwithstanding the failure to obtain leave (o); but, under the existing practice, a disclaimer without leave, where leave is required, is for all purposes void (i).

- (h) Sect. 55, sub-sect. (3). As to granting leave, see Ex parte E. & W. India Dock Co. (1881), 17 Ch. D. 759; Ex parte Buxton (1880), 15 Ch. D. 289; and as to appeal, Re Woods (1876), 3 Ch. D. 459; Ex parte Sadler (1881), 19 Ch. D. 122; Ex parte E. & W. India Dock Co., supra; as to applying for leave after lapse of twelve months, Re Baker (1891), 8 Morr. 116; as to including several properties in same application, Re Whituker (1888), 21 Q. B. D. 261; as to trustee's costs, Re Proctor (1891), 8 Morr. 251. Notice of motion may be served out of the jurisdiction: Re Rathbone (1887), 56 L. J. Q. B. 504. As to lease of chattels, see Sheffield Wagon Co. v. Stratton (1878), 48 L. J. Q. B. 35.
 - (i) Bankr. Rules, r. 320.

- (k) Re Sandwell (1885), 14 Q. B. D. 960.
- (1) Ex parte Izard (1883), 23 Ch. D. 115; Re Zaffert (1884), 1 Morr. 72; Re Brooke (1884), 1 Morr. 82.
- (m) Ex parte Isherwood (1882). 22 Ch. D. p. 395; Ex parte Arnal (1883), 24 Ch. D. 26; Ex parte Good (1884). 13 Q. B. D. 731, 735.
- (n) For refusal of leave where the trustee has acted for parties with opposing interests, see Re Crowther (1887), 4 Morr. 100; and for the considerations applicable where the bankrupt was tenant under an attornment clause in a mortgage deed, see Ex parte Isherwood (1882), 22 Ch. D. 384.
- (o) Reed v. Harvey (1880), 5 Q. B.D. 184. See Ex parte Ladbury (1881), 17 Ch. D. 532.

Any person interested in the property may call upon the Notice to trustee to decide whether he will disclaim or not, and the trustee must then within twenty-eight days, or within such extended period as may be allowed by the Court, give his decision (p). The notice calling on the trustee to decide may be given by the landlord (q), and it must be actually received by the trustee (r). The trustee, if he requires an extension of time, should, in the absence of special circumstances (s), apply to the Court before the twenty-eight days have expired (t).

If the trustee disclaims, any person claiming any interest in Vesting the property, or under liability in respect of it, may apply for an order for the vesting of the property in or delivery thereof to any person entitled thereto, or to whom it may seem just that the same should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just (u). An underlessee or mortgagee of the bankrupt, taking under a vesting order, must take the property on the terms of being subject to the same liabilities and obligations as the bankrupt was subject to at the date when the bankruptcy petition was filed. If he declines to accept such an order, he is excluded from all interest in the property. lessor is, for the purpose of this provision, a person claiming an interest in the disclaimed property (x), and, although he may not be in a position to ask for an order vesting the property in himself, still he may put the statutory machinery in motion for the purpose of ascertaining whether a sublessee is willing to accept an order vesting the property in him subject to the bankrupt's liabilities in respect of it, or, if not, to give up his interest in the property (y). In other words, he may apply for an order requiring an underlessee or mortgagee to take the

⁽p) Sect. 55, sub-sect. (4) of the Bankr. Act, 1883.

⁽q) Ex parte Mackay (1884), 14 Q. B. D. 401.

⁽r) Reed v. Harvey, 5 Q. B. D. 184. (s) Ex parte Lovering (1874), L. R.

⁹ Ch. 586; Ex parte Moore (1876), 2 Ch. D. 802.

⁽t) Re Richardson (1880), 16 Ch. D. 613.

⁽u) Act of 1883, s. 55, sub-s. (6). Payment of rent by a mortgagee in possession may create a tenancy from year to year, although the lease has

been disclaimed by the trustee in bankruptcy of the mortgagor: Jump v. Payne (1899), 68 L. J. Q. B. 607. As to the jurisdiction of a county court in bankruptcy to decide a question of merger arising in connection with an application for a vesting order, see Lea v. Thursby, [1904] 2 Ch. 57.

⁽x) Re Finley (1888), 21 Q. B. D. 475; Ex purte Shilson (1887), 20 Q. B. D. 343.

⁽y) Re Baker, Ex parte Lupton, [1901] 2 K. B. 628.

property with the liabilities and obligations of the lease, or to be excluded (z).

The registrar has a discretion as to the persons to be served with notice of an application under this sub-sect. (6) of sect. 55 of the Act of 1883; and if the lessee, for instance, is not served, he will not be prejudiced by an order made in his absence (a).

Liability under vesting order.

Before the passing of the Bankruptcy Act, 1890, it was considered doubtful whether the person in whom the lease was thus vested was liable as an original lessee, or only as an assignee (b). Under sect. 13 of the last-mentioned Act he may be made liable as an assignee only. But this power will be exercised only under special circumstances, and in general the vesting order requires the person in whose favour it is made to take upon himself the burden of the unperformed obligations, both past and future, to which the bankrupt was liable (c). A mortgagee cannot escape liability by the device of assigning to a nominee who is a bare trustee for him (d).

Damages.

A person injured by the operation of a disclaimer can prove in the bankruptcy for the amount of his loss (e). The measure of damages in respect of future rent is the difference between the rent due under the lease for the residue of the term and the rent that now can be obtained (f); it includes also the sum required to leave the property in the same state as if the covenants had been properly performed (g). Where the assignee of a repairing lease had become bankrupt, and his trustee had disclaimed the premises, which had become depreciated in letting value, the assignor was allowed, under his covenant of indemnity, to prove as damages (i) two quarters' rent from the date of disclaimer to give time to repair and relet, (ii) the diminution in letting value for the residue of the term, and (iii) the amount of the dilapidations (h). Where the lease is determinable at any of several periods, it is to be taken, for the purpose of assessing

(z) See $Re\ Britton (1889), 61\ L.\ T.\ 52.$

sub-sect. (7).

(g) Ex parte Blake (1879), 11 Ch. D. 572.

⁽a) Re Baker, [1901] 2 K. B. at p. 640; Re Morgan (1889), 22 Q. B. D. 592.

⁽b) Re Finley (1888), 21 Q. B. D. at p. 487.

⁽c) Re Walker (1895), 72 L. T. 330. (d) Re Smith (1890), 25 Q. B. D. 536, 542.

⁽e) Bankr. Act, 1883, sect. 55,

⁽f) Re Llynni Coal Co. (1871), L. R. 7 Ch. 28. The lessor may also prove for an apportioned part of the rent accrued due between the last quarter-day and the date of adjudication: Re Leeks, [1902] 2 Ir. R. 339.

⁽h) Re Carruthers, [1895] 2 Man. 172.

damages, as though it would have been determined at the earliest period (i). In a case decided by the Court of Appeal in the year 1880, where there had been a lease to partners as joint tenants, who gave a joint and several covenant for payment of rent, it was held that the lessor was entitled, under sect. 23 of the Bankruptcy Act, 1869 (j), to prove against each partner's separate estate for the injury caused to him by the trustee's disclaimer of the lease (k).

(3) On Conviction of Lessee for Treason or Felony.

By the Forfeiture Act, 1870 (l), "convict" is defined to mean any person against whom judgment of death or of penal servitude has been pronounced upon any charge of treason or felony (m), and an administrator of the property of a convict may be appointed (n).

The 10th section of the Act provides that upon the appointment of any such administrator, all the real and personal property, including choses in action, to which the convict named in such appointment was, at the time of his conviction, or shall afterwards, while he shall continue subject to the operation of trator. the Act, become or be entitled, shall vest in such administrator for all the estate and interest of such convict therein.

33 & 34 Vict c. 25, s. 10. Property of convict to vest in adminis-

The administrator has absolute power to let, mortgage, sell, Sect. 12. convey, and transfer any part of such property as to him shall seem fit (o); and he may cause payment or satisfaction to be Sect. 14. made out of such property of any debt or liability of such convict which may be established in due course of law, or may otherwise be proved to his satisfaction.

- (i) Ex parte Blake (1879), 11 Ch. D. 572.
- (j) Sub-sect. (7) of sect. 55 of the Act of 1883 is a re-enactment of the concluding part of sect. 23 of the Act of 1869.
- (k) Ex parte Corbett (1880), 14 Ch. D. 122.
 - (l) 33 & 34 Vict. c. 23.
 - (m) Sect. 6. (n) Sect. 9.
- (o) Under this section the administrator has an absolute power of sale to be exercised, of course, reasonably

and properly—irrespectively of any question as to whether money is wanted for payment of debts or not: Carr v. Anderson, [1903] 1 Ch. 90, at p. 94. But if an administrator is proved to have exercised no discretion, and taken no care, in the matter of a sale, and a loss thereby ensues to the convict's estate, that administrator will probably be held by the Court to be personally responsible for the loss. S. C. in C. A., [1903] 2 Ch. 279, at p. 283.

CHAPTER VI.

DETERMINATION OF THE TENANCY.

Sect. I. Modes applicable to particular kinds of Tenancy 462 (2) Determination of tenancy at sufference 462 (2) Determination of tenancy at will 463			PAGE
(1) Determination of tenancy at sufferance (2) Determination of tenancy at will Express Implied (3) Determination of tenancy from year to year (ii) When determinable (ii) Notice to quit (ii) Notice to quit (iii) Notice to quit (iii) Notice to quit (iii) Reckoning of period (iii) Reckoning of period (iii) Reckoning of period (iii) Reckoning of period (iii) Promound of tenancies in the given (iiii) Verbal disclaimer (iiiiiiiiiiiiiiiiiiiiiiiiiiiiiiiiiiii	SECT I	MODES APPLICABLE TO PARTICULAR KINDS OF TENANCY	
(2) Determination of tenancy at will Express	DECI. I.		
Express Implied 464 (3) Determination of tenancy from year to year . 465			
Implied			
(3) Determination of tenancy from year to year			
(i) When determinable			
(ii) Notice to quit			
(a) Length of notice		. No. '	
(b) Reckoning of period			
(c) Form of notice	•		
(d) By whom notice may be given 475 (e) To whom notice is to be given 476 (f) Mode of service 477 (g) Waiver of notice 479 (iii) Verbal disclaimer 481 (4) Determination of tenancies for terms of years 481 Tenancies for optional terms 482 (5) Determination of tenancies for life 483 SECT. II. Modes Generally Applicable 483 (1) Merger 483 (2) Surrender 485 Express 485 Implied 487 Rent after surrender 492 Operation of surrender on rights of third persons 493 Surrender for purpose of renewal 493 (3) Forfeiture 494 (i) Where there is no express proviso for re-entry 496 (ii) Where there is an express proviso 496 Re-entry 496 (iii) Waiver of forfeiture 497 (iii) Waiver of forfeiture 496 (iv) Relief against forfeiture 506 (a) Under the Conveyancing Acts 506 (b) In respect of non-payment of rent 516 <td></td> <td></td>			
(e) To whom notice is to be given			
(f) Mode of service		(e) To whom notice is to be given	
(g) Waiver of notice (iii) Verbal disclaimer (4) Determination of tenancies for terms of years Tenancies for optional terms (5) Determination of tenancies for life (5) Determination of tenancies for life (5) Determination of tenancies for life (6) Modes Generally applicable (1) Morger (2) Surrender (2) Surrender (3) Express (45) Express (46) Express (47) (48) (48) (5) Modes Generally applicable (48) (6) Surrender (7) Modes (8) Express (8) Express (9) Express (9) Express (90 Express (•
(iii) Verbal disclaimer (4) Determination of tenancies for terms of years			. 479
(4) Determination of tenancies for terms of years 481 Tenancies for optional terms 482 (5) Determination of tenancies for life 483 SECT. II. Modes generally applicable 483 (1) Merger 483 (2) Surrender 485 Express 485 Implied 487 Rent after surrender 492 Operation of surrender on rights of third persons 493 Surrender for purpose of renewal 493 (3) Forfeiture 494 (i) Where there is no express proviso for re-entry 495 (ii) Where there is an express proviso 496 Re-entry 497 (iii) Waiver of forfeiture 493 (iv) Relief against forfeiture 503 (a) Under the Conveyancing Acts 504 (b) In respect of non-payment of rent 516			. 481
Tenancies for optional terms			. 481
(5) Determination of tenancies for life			. 482
SECT. II. Modes Generally applicable			. 483
Express Express Implied Rent after surrender Operation of surrender on rights of third persons Surrender for purpose of renewal (3) Forfeiture (i) Where there is no express proviso for re-entry (ii) Where there is an express proviso Demand of rent Re-entry (iii) Waiver of forfeiture (iv) Relief against forfeiture (a) Under the Conveyancing Acts (b) In respect of non-payment of rent 485 485 485 485 485 485 485 485 485 48	SECT. II.		. 483
Express Express Implied Operation of surrender on rights of third persons Surrender for purpose of renewal (3) Forfeiture (i) Where there is no express proviso for re-entry (ii) Where there is an express proviso Demand of rent Re-entry (iii) Waiver of forfeiture (iv) Relief against forfeiture (a) Under the Conveyancing Acts 500 (b) In respect of non-payment of rent 510		(1) Merger	. 483
Implied			. 485
Rent after surrender Operation of surrender on rights of third persons Surrender for purpose of renewal (3) Forfeiture (i) Where there is no express proviso for re-entry (ii) Where there is an express proviso Demand of rent Re-entry (iii) Waiver of forfeiture (iv) Relief against forfeiture (a) Under the Conveyancing Acts (b) In respect of non-payment of rent 492 493 494 495 496 496 497 497 497 498 499 499 499 499 499 499 499 499 499		Express	. 485
Operation of surrender on rights of third persons Surrender for purpose of renewal		Implied	. 487
Surrender for purpose of renewal		Rent after surrender	. 492
Surrender for purpose of renewal		Operation of surrender on rights of third persons	. 492
(i) Where there is no express proviso for re-entry (ii) Where there is an express proviso Demand of rent Re-entry (iii) Waiver of forfeiture (iv) Relief against forfeiture (a) Under the Conveyancing Acts (b) In respect of non-payment of rent 494 495 496 497 497 498 499 499 499 499 499			. 493
(ii) Where there is an express proviso Demand of rent Re-entry (iii) Waiver of forfeiture (iv) Relief against forfeiture (a) Under the Conveyancing Acts (b) In respect of non-payment of rent 196 197 298 298 298 298 298 298 298 298 298 298		(3) Forfeiture	. 494
Demand of rent Re-entry (iii) Waiver of forfeiture (iv) Relief against forfeiture (a) Under the Conveyancing Acts (b) In respect of non-payment of rent 510		(i) Where there is no express proviso for re-entry	. 494
Re-entry		(ii) Where there is an express proviso	. 496
(iii) Waiver of forfeiture (iv) Relief against forfeiture (a) Under the Conveyancing Acts		Demand of rent	. 497
(iv) Relief against forfeiture		Re-entry :	. 499
(a) Under the Conveyancing Acts		(iii) Waiver of forfeiture	. 499
(b) In respect of non-payment of rent 510		(iv) Relief against forfeiture	. 503
			. 504
			. 510
			. 510

SECT. I.—MODES APPLICABLE TO PARTICULAR KINDS OF TENANCY.

(1) DETERMINATION OF TENANCY AT SUFFERANCE.

Tenancy at sufference may be determined at any time by landlord or tenant without any demand of possession or notice to quit (a).

(a) Doe v. Turner (1840), 7 M. & 1 Stark. 308. See Doe v. Murrell W. at p. 235; Doe v. Lawder (1816), (1837), 8 C. & P. 134; Wallis v.

(2) DETERMINATION OF TENANCY AT WILL.

Every lease at will must in law be at the will of both parties, 1. Express and therefore when the lease is made to have and to hold at the determinawill of the lessor, the law implies it to be at the will of the lessee also (b). In general, accordingly, the tenancy continues until the will of either party has been determined, and intimation given to the other party. Thus the landlord cannot recover in ejectment against his tenant at will unless he has demanded possession (c). A notice, though couched as a notice to quit, does not necessarily recognise a subsisting tenancy from year to year, but may be a mere demand of possession (d).

Where, on a letting at will, rent is reserved payable quarterly, it has been held that the landlord terminating the tenancy within the quarter loses the rent, but the tenant terminating the tenancy pays (e). Now, however, under the Apportionment Act, 1870 (f), it is conceived that in either case an apportioned rent would be payable.

The landlord may determine a tenancy at will expressly, by By landlord. stating his will to be that the tenant shall leave (g), or by demanding possession (h), or sending for the keys (i). Anything which amounts to a demand of possession, although not expressed in precise and formal language, will indicate the landlord's will to determine the tenancy (k); hence a letter from the agent of the landlord to the agent of the tenant, stating that, unless the tenant pays what he owes, the landlord will take immediate measures to recover possession of the property, is a sufficient intimation that the tenancy is to determine (l). By words spoken off the demised premises the will is not determined until the lessee has notice (m).

The tenant may expressly determine the tenancy by declaring By tenant. that he will no longer hold possession of the premises, and

Delmar (1860), 29 L. J. Ex. 276. And as to possession taken pending completion of a sale or negotiations for a lease, see Doe v. Sayer (1811), 3 Camp. 8; Doe v. Quiyley (1810), 2 Camp. 505.

- (b) Co. Litt. 55 a. (c) Goodtitle v. Herbert (1792), 4 T. R. 680. See Denn v. Rawlins (1808), 10 East, 261.
 - (d) Doe v. Inglis (1810), 3 Taunt. 54.
- (e) Leighton \mathbf{v} . Theed (1702), $\mathbf{2}$ Salk. 413.
 - (f) Supra, p. 240.

(g) Pollen v. Brewer (1859), 7 C. B. N. S. 371, 373.

(h) Doe v. Jones (1830), 10 B. & C. 718, 721; Doe v. M'Kaeg (1830), 10 B. & C. 721.

(i) Pollen v. Brewer, supra.

- (k) Judgment of Tindal, C.J., in Doe v. Price (1832), 9 Bing. at p. 358. See Locke v. Matthews (1863), 13 C. B. N. S. 753.
 - (1) See note (k), supra. (m) Co. Litt. 55 b.

quitting them accordingly; but the mere declaration will not produce this effect (n).

2. Implied determination.

By landlord.

The landlord may impliedly determine a tenancy at will by acts showing an intention that it should no longer exist; as, for instance, by making a lease of the premises to another, to commence presently (o); or by doing what, but for the determination of the will, would be wrongful, as entering upon the land to retake possession (p), or going there, without the tenant's consent, to cut and carry away trees or stone (q), provided such trees and stone are not excepted from the demise (r); or by agreeing to sell the freehold to the tenant (s).

A conveyance of the reversion operates as a determination of a tenancy at will, if the tenant has notice of it (t); and the bankruptcy of the landlord has the same effect by reason of the vesting of the reversion in the trustee (u). Where the act by which the intention of the landlord to determine the tenancy is manifested is done on the demised premises, it is presumed that the tenant is there and knows of it; but if the act relied upon be done off the premises, it is requisite that the landlord should give the tenant notice that he determines the tenancy (x).

By tenant.

The tenant may impliedly determine the tenancy at will by granting an underlease (y), or assigning the premises (provided the landlord has notice) (z); or by committing waste (a).

The general doctrine is that the death of either landlord or tenant will operate as a determination of the will (b); but it has been suggested that a tenancy at will may continue after the death of one of the parties, unless the heir, or legal representative, does something to manifest his intention to determine the tenancy (c).

(n) Co. Litt. 55 b, note 373.

(o) Dinsdale v. Iles (1674), 2 Lev. 88; Hogan v. Hand (1861), 14 Moo. P. C. 310.

(p) See Wallis v. Delmar (1860),

29 L. J. Ex. 276.
(q) Doe v. Turner (1840), 7 M. & W. 226; 9 M. & W. 643.

(r) Co. Litt. 55 b.

(s) See judgment of Lord Eldon, C., in Daniels v. Davison (1809), 16 Ves. at p. 252.

(t) Doe v. Thomas (1851), 6 Ex. 854. See Doe v. Davies (1851), 7 Ex. 89.

(u) Doe v. Thomas, supra.

(x) Per Parke, B., in Pinhorn v. Souster (1853), 8 Ex. p. 770. See

Ball v. Cullimore (1835), 2 Cr. M. & R. 120.

(y) Birch v. Wright (1786), 1 T. R. p. 382.

(z) Pinhorn v. Souster (1853), 8 Ex. 763, 772. See Carpenter v. Colins (1606), Yelv. 73.

(a) Co. Litt. 57 a.

(b) James v. Dean (1805), 11 Ves. at p. 391; Co. Litt. 57 b. See Dee v. Rock (1842), Car. & M. 549, 553.

(c) Judgment in Morton v. Woods (1869), L. R. 4 Q. B. at p. 306. As regards the heir, this must now be read subject to sect. 1 of the Land Transfer Acts, 1897, supra, p. 61.

SECT. I. MODES APPLIED TO PARTICULAR KINDS OF TENANCY.

The death of the mortgagor is a determination of his tenancy at will under the mortgagee (d).

(8) DETERMINATION OF TENANCY FROM YEAR TO YEAR.

(i) When determinable.

A tenancy from year to year may be determined at the end Tenancy of the first or any subsequent year (e); unless, in creating the from year to year. tenancy, the parties use expressions showing that they contemplate a tenancy for two years at least (f). A tenancy "for one year certain, and so on from year to year," cannot be determined before the end of the second year (g); and if it is for one year certain, with a specified notice to quit afterwards, notice cannot be given for the end of the first year (h).

A lease to A. B., his executors, administrators, and assigns, for a year, and so on from year to year, for so long as it shall please the lessor and A. B., his executors, administrators or assigns, does not expire on the death of A. B., but vests in his executors (i).

Where the tenant is to go on at a lower rent if the premises cannot be let at the old rent, he is bound to allow inspection to an intending tenant (k).

(ii) Notice to quit.

A yearly tenancy is determined by a proper notice to quit given Where notice by either party to the other (l), but it may be stipulated that, upon a particular event, the lessee may quit without notice (m). An undertenant is not justified in leaving without notice merely

required.

- (d) Turner v. Barnes (1862), 2 B. & S. 435; Scobie v. Collins, [1895] 1 Q. B. 375.
- (e) Doe v. Smaridge (1845), 7 Q. B. 957.
- (f.) Doe v. Smaridge, 7 Q. B. 959. See Denn v. Cartwright (1803), 4 East, 29; Doe v. Mainby (1847), 10 Q. B. 473.
- (g) Doe v. Green (1839), 9 A. & E. 658; Reg. v. Chawton (1841), 1 Q. B. 247. See Bac. Abr. (L. 3), 838.
- (h) Thompson v. Maberley (1811), 2 Camp. 573, is to the contrary, but it was questioned in Gardner v. Ingram (1889), 61 L. T. 729 (agreement for five years, determinable after the expiration of three years

L.T.

- on a specified notice). See Jones v. Nixon (1862), 1 H. & C. 48; Cannon Brewery Co., Ltd. v. Nash (1898), 14 T. L. R. 158.
- (i) Mackay v. Mackreth (1785), 4 Dougl. 213.
- (k) Doe v. Hunt (1836), 1 M. & W. **690.**
- (1) See notes to Duppa v. Mayo, 1 Wms. Saund. ed. 1871, 385; notes to Clayton v. Blakey, 2 Sm. L. C. 11th ed. 127; and Bull. N. P. 96, notes (c) and (a). The notice may be given on Sunday: Sangster v. Noy (1867), 16 L. T. 157.

(m) Bethell v. Blencowe (1841), 3

M. & Gr. 119.

through fear of distress by the superior landlord (n). But notice is not required if the tenancy is invalid as against the owner protempore; thus formerly tenant by elegit was not required to give notice to a tenant who came in after the judgment (o). Notice need not be given to an occupier who is in as a servant, and not as a tenant, when he is required to leave on the termination of his service (p).

Non-payment of rent for a long time may be presumptive evidence of the determination of a tenancy from year to year (q).

(a) LENGTH OF NOTICE.

1. Where there is no express agreement.

Where no express stipulation is made between the parties as to the length of notice required to be given, it seems that this may be regulated by custom (r); but there must be strong evidence of such custom (s).

Half-year s notice.

If no such custom exists, reasonable notice to quit must be given (t), and it is settled that the reasonable notice to which a tenant from year to year of corporeal hereditaments is entitled is half-a-year's notice (u), expiring at the end of some current year of the tenancy (x), notwithstanding the rent is reserved quarterly (y). The rule applies also to the case of notice given by an executor (z), and to the case of an infant who becomes entitled to the reversion of an estate leased from year to year (a); but it does not apply to the case of enjoyment of an incorporeal hereditament, such as a right of shooting; so that a comparatively short notice of intention to determine such a right may be reasonable notice (b).

(n) Rickett v. Tullick (1833), 6 C. & P. 66.

(o) Doe v. Hilder (1819), 2 B. & A. 782, see p. 785. But now the tenant's title would be good if he came in before registration of the writ: Land Charges Registration Act, 1888 (51 & 52 Vict. c. 51); Judgments Act, 1864 (27 & 28 Vict. c. 112).

(p) R. v. Inhabs. of Cheshunt (1818), 1 B. & A. 473; Doe v. Derry (1840), 9 C. & P. 494; Mayhew v. Suttle (1854), 4 E. & B. 347. See Doe v. Miles (1816), 1 Stark. 181.

(q) Stagg v. Wyatt (1838), 2 Jur. 892. (r) Roe v. Wilkinson (1773), cited in note 228 to Co. Litt. 270 b. See, too, Roe v. Charnock (1790), Peake,

N. P. C. 4; also judgment in Doe v. Snowden (1779), 2 W. Bl. at p. 1225;

Tyley v. Seed (1697), Skin. 649.

(s) Roe v. Charnock, supra, at p. 5. (t) Doe v. Watts (1797), 7 T. R. per Lord Kenyon, p. 85.

(u) Right v. Darby (1786), 1 T. R. p. 163; Birch v. Wright (1786), 1 T. R. p. 379; Maddon v. White (1787), 2 T. R. 159; Doe v. Porter (1789), 3 T. R. p. 17.

(x) Judgment of Erle, C.J., in Bridges v. Potts (1864), 17 C. B. N. & p. 332.

(y) Shirley v. Newman (1795), 1 Esp. 266.

(z) Gulliver v. Burr (1766), 1 W. Bl. 596.

(a) Maddon v. White (1787), 2 T. R. 159.

(b) Lowe v. Adams, [1901] 2 Ch. 598, 601.

within the

Holdings

Acts.

Agricultural

The general rule is varied, in the case of holdings (c) to which Holdings the Agricultural Holdings Acts, 1883 and 1900, apply, by the 33rd section of the Act of 1883, which is as follows:—

"Where a half-year's notice, expiring with a year of tenancy, 46 & 47 Vict. is by law (d) necessary and sufficient for determination of a c. 61, s. 33. tenancy from year to year, in the case of any such tenancy under a contract of tenancy made either before or after the commencement of the Act, a year's notice so expiring shall by virtue of this Act be necessary and sufficient for the same, unless the landlord and tenant of the holding, by writing under their hands, agree that this section shall not apply, in which case a half-year's notice is to continue to be sufficient; but nothing in the section shall extend to a case where the tenant is adjudged bankrupt, or has filed a petition for a composition or arrangement with his creditors."

A notice to quit under the foregoing enactment may be served in any of the modes authorized by the 28th section of the Act of 1883 (e).

There is some uncertainty as to the length of the notice Short required to determine a quarterly, monthly, or weekly tenancy. A weekly tenancy does not determine without notice at the end of each week, and it is clear that some notice is required to deter-Apparently also the notice should be a week's notice (g), and so in a quarterly tenancy a quarter's notice (h), and in a monthly tenancy a month's notice, should be given (i).

The parties to the tenancy may arrange the notice necessary to determine it. "If the parties choose to do so, they may express agree-

2. Where there is an ment.

(c) Agric. Hold. Act, 1883, s. 54; and see infra, Chap. VII., Sect. 4 (1). 1883 is quoted infra, p. 477.

(d) Where the parties have expressly agreed for half-a-year's notice, the notice is not regulated by law, i.e., by implication of law, and the section is excluded: Barlow v. Teal (1885), 15 Q. B. D. 501. It is also excluded if the agreement is for six months' notice, on the ground that such a notice is not half-a-year's notice: Wilkinson v. Calvert (1878), 3 C. P.D. 360. To exclude the section in cases where it would prima facie apply, the parties must specifically agree in writing to that effect, and both parties, or (it is conceived) their agents, must sign the writing.

(e) Van Grutten v. Trevenen, [1902]

2 K. B. 82. Sect. 28 of the Act of

(f) Bowen v. Anderson, [1894] 1 Q. B. 164; Jones v. Mills (1861), 10 C. B. N. S. 788. See, too, per Parke, B., in Huffell v. Armitstead (1835), 7 C. & P. p. 58; Doe v. Hazell (1794), 1 Esp. 94; Doe v. Raffan (1796), 6

(g) Harvey v. Copeland (1892), 30

L. R. Ir. 412.

(h) Towne v. Campbell (1847), 3 C. B. 921. See Wilkinson v. Hall (1837), 3 Bing. N. C. 508, p. 531.

(i) Beamish v. Cox (1885), 16 L. R. Ir. 270, 458. See per Williams, J., in Jones v. Mills (1861), 10 C. B. N. S. p. 798.

stipulate that they shall be at liberty to put an end to the tenancy by a notice expiring at any time "(k). For instance, they may agree that a three months' notice "on either side at any time"(k), or even a week's notice, shall be sufficient (l); and there is no objection to a tenancy being created which is to be determined by a week's notice to quit, with an allowance of a reasonable time after the expiration of the notice for the tenant to remove his goods (m).

It is, however, to be borne in mind that, where a week's notice has to be given, that means seven clear days' notice; and a fraction of a day cannot be counted in the length of notice (n).

The parties may also stipulate that the notice shall expire at any period of the year (o). Where there is no express or implied stipulation, the notice agreed upon between the parties must be given so as to expire at the end of some current year of the tenancy (p). Thus, an agreement by a tenant from year to year to quit at a quarter's notice, means a quarter's notice expiring at the end of some year of the tenancy (p). And so, where there was an agreement for tenancy of a shop at "the rent of 25l. per annum from October 1st, 1894, three months' notice on either side to terminate the agreement," it was held that the tenancy was a yearly one, determinable only on the 1st of October in any year upon three months' notice (q).

(b) RECKONING OF PERIOD OF NOTICE.

In strictness half-a-year is 182 days (r), and where the tenancy commences between two quarter-days, this is the period of the. notice (s), the number of days being reckoned by including one

(k) Soames v. Nicholson, [1902] 1

K. B. at p. 158.

(l) Judgment of Erle, C.J., in Bridges v. Potts (1864), 17 C. B. N. S. p. 333; followed in Soames v. Nicholson, supra.

(m) Cornish v. Stubbs (1870), L.R. 5 C. P. 334. In Vint v. Constable (1871), 25 L. T. 324, a custom was set up for the tenant of a stone quarry to remain, after the expiry of a notice to quit, in order to get the stone he had "bared," but the evidence failed to establish it.

(n) Weston v. Fidler (1903), 88 L. T. 769.

(0) See Bridges v. Potts (1864), 17

C. B. N. S. 333; Doe v. Grafton (1852), 18 Q. B. 496; Collett v. Curling (1847), 10 Q. B. 785; Re Threlfall (1880), 16 Ch. D. 274; King v. Eversfield, [1897] 2 Q. B. 475.

(p) Doe v. Donovan (1809), 1 Taunt. 555; 2 Camp. 78; Brown v. Burtinshaw (1826), 7 D. & Ry. 603. See, too, Bridges v. Potts, and Soames v. Nicholson, supra; Cadby v. Martinez (1840), 11 A. & E. 720.

(q) Dixon v. Bradford, &c., Coal Supply Co., [1904] 1 K. B. 444. As to Kemp v. Derrett (1814), 3 Camp.

510, quære.

(r) Co. Litt. 135 b. (s) 1 Wms. Saund. ed. 1871, p. 386. extreme and excluding the other (t). But where the tenancy commences on a quarter-day, a notice reckoned by a customary half-year is both sufficient (u) and necessary. Thus, notice on the 29th September to quit on 25th March is good, though the interval is only 177 days (x). And notice on the 26th March to quit on the 29th September will not do, though the interval is 187 days (y). So where a tenancy commencing on one of the ordinary feast-days is expressly made determinable on six months' notice, this means a customary six months; that is, from one of the usual quarter-days to the next but one following, although such six months should exceed or fall short of the number of days which constitute half-a-year (z). Where six calendar months' notice is to be given, the requirement must be strictly followed, notwithstanding that by the custom of the country a shorter period constitutes a half-year (a). But ordinarily "month" means lunar month (b). That is the primary meaning of the word in legal documents (c).

As already stated, the half-year's notice must ordinarily expire Expiration at the end of the year of the tenancy (d), and a notice given to quit at a date subsequent to the expiration of the year is bad. Following out this rule strictly, a notice to determine on 19th May a tenancy beginning on that day in a previous year would be bad; for the whole of the first 19th May would be reckoned in the year (e), and hence a subsequent 18th May would be the last day, and notice should be given for this date (f); though, if the tenancy commenced from 19th May, 'that date would be excluded (g), and notice for an ensuing 19th May would be good. This refinement, however, has not been adopted, and whether the term commences "on" or "from" a given date, notice may be effectually given for any

want statute of tered this

of notice.

⁽t) Sidebotham v. Holland, [1895] 1 Q. B. 378, per Lindley, L.J., at p. 384; Quartermaine v. Selby (1889), **5** T. L. R. 223.

⁽u) Roe ∇ . Doe (1830), 6 Bing. 574; Doe v. Green (1803), 4 Esp. 198.

⁽x) 1 Wms. Saund. p. 386; Doe v. Green, supra.

⁽y) Right \forall . Darby (1786), 1 T. R. 159; Morgan v. Davies (1878), 3 C. P. D. 260.

⁽z) Morgan v. Davies, supra. (a) Travers v. Mason (1896), 45 W. B. 77.

⁽b) Johnstone v. Hudlestone (1825), 4 B. & C. p. 932. See, too, Royers v. Kingston Dock Co. (1864), 34 L.J. Ch. 165, judgment of Wood, V.-C., p. 166.

⁽c) Bruner v. Moore, [1904] 1 Ch. 305. (d) Doe v. Grafton (1852), 18 Q. B. 496. See, too, per Lord Campbell, C.J., and Erle, J., pp. 501, 502; Doe v. Lea (1809), 11 East, 312.

⁽e) Clayton's Case (1586), 5 Rep. 1 a. (f) Sidebotham v. Holland, [1895] 1 Q. B. 378, judgment of A. L. Smith, L.J.

⁽g) Clayton's Case, supra.

anniversary of that date (h). And notice must be to quit on that day generally, not at any particular hour before the end of the day (i). Any difficulty as to the exact date should be avoided by framing the notice in the usual alternative form (k).

Weekly tenancy.

Where a weekly tenancy begins on Thursday, notice should be served for that day, though notice to quit on or before Friday in a subsequent week is probably good (l). The difficulty may be overcome, as in the case of a yearly tenancy, by giving the notice in a general form; that is, to quit at the end of the tenancy next after a week from the date of the notice (m).

Period with reference to which notice must be given. The implied condition as to the notice expiring at the end of some year of the tenancy renders it important that the time of commencement of the tenancy should be correctly ascertained. The question at what period a tenancy began is a matter for the decision of a jury, upon a consideration of all the facts (n). If the tenant alleges that a notice to quit given to him does not correspond with the time at which his tenancy commenced, it is incumbent on him to prove the true time of commencement (o). Where the commencement of a tenancy was on Old Michaelmas Day, a notice to quit at Michaelmas was held to mean Old Style, and was therefore good (p).

Admissions by tenant.

When a tenant, on being applied to respecting the commencement of his holding, informs the person making the inquiry that it begins on a certain day, and notice to quit on that day is given at a subsequent time, the tenant will not be allowed to set up a holding from a different day (q). It makes no difference whether the information so given proceeds from mistake or design (q). The mere notice to quit, at a certain time, given by the landlord, is not, in itself, evidence of a holding from that time (r); but if it be served personally on the tenant, and he make no objection at the time, this is $prim\hat{a}$ facie evidence from which a jury may find

(h) Sidebotham v. Holland, [1895] 1 Q. B. 378.

(i) Page v. Moore (1850), 15 Q. B. 684.

(k) Infra, p. 74, in note (d); Sidebotham v. Holland, supra, judgment of A. L. Smith, L.J., p. 389.

(l) Harvey v. Copeland (1892), 30 L. R. Ir. 412. So held by Johnson and O'Brien, JJ.; Gibson, J., diss.

(m) Doe v. Scott (1830), 6 Bing. 362.

(n) Walker v. Godê (1861), 6 H. &

N. 594; supra, p. 97.

(o) Doe v. Wrightman (1801), 4

Esp. p. 7.

(p) Denn v. Walker (1800), Peake, Add. Cas. 194: Doe v. Vince (1809),

Add. Cas. 194; Doe v. Vince (1809), 2 Camp. 256; Doe v. Perrin (1840), 9 C. & P. 467; Furley v. Wood (1794), 1 Esp. 198.

(q) Doe v. Lambley (1798), 2 Esp. 635.

(r) Per Lord Ellenborough, C.J., in Doe v. Forster (1811), 13 East, p. 406.

that the tenancy commenced at the period specified in the notice (s). The tenant, however, is not precluded from afterwards insisting on the insufficiency of the notice (t). tenant who by mistake gives notice for an earlier period than the end of the year is not bound by the notice, although it is accepted by the landlord (u).

Where a tenant continues in possession after the expiration of Where tenant his lease without having entered into any new contract, he holds upon the former terms as to the time of quitting (x). If, whilst expiration of holding over, he assigns his interest, the tenancy of the assignee . will also be held to commence on the same day as the original lease (y). But if the lease has already been assigned, so that it is the assignee and not the original lessee who holds over, it seems that the yearly tenancy arising on payment of rent commences on the expiration of the lease (z).

keeps possession after lease.

A void lease or agreement, under which a tenant has entered where tenant and paid rent, will regulate the terms on which the tenancy subsists, including the time of the year when the tenant is to quit (a). If, subsequently to the expiration of the term fixed by the void lease or agreement, the tenant goes on paying rent, the tenancy from year to year thus arising will be determinable by notice to quit expiring at the time of his original entry (b). no notice to quit is necessary at the expiration of the term originally contemplated by the agreement or lease (c). lation for two years' notice cannot be incorporated in a yearly tenancy arising upon occupation under an agreement for a lease (d). Where a tenant from year to year, having entered in the middle Where tenant of a quarter, pays rent to the next quarter-day, and thenceforth

enters under void lease.

between two quarter-days.

```
(s) Doe v. Forster, 13 East, 405;
Doe v. Woombwell (1811), 2 Camp.
559; Thomas v. Thomas (1811), 2
Camp. 647; Doe v. Biggs (1809), 2
Taunt. 109.
```

(t) Oakapple v. Copous (1791), 4 T. R. 361.

(u) Doe v. Milward (1838), 3 M. & W. 328.

(x) See Doe v. Bell (1793), 5 T. R. p. 472; Roe v. Ward (1789), 1 H. Bl. 96; Doe v. Weller (1798), 7 T. R. 478. See Doe v. Dobell (1841) 1 Q. B. 806; Humphreys ∇ . Franks (1856), 18 C. B. 323; Kelly v. Patterrson (1874), L. R. 9 C. P. 681 (see this case as to holding over by an underlessee

against the lessor); Simmons v. Underwood (1897), 76 L. T. 777.

(y) Doe v. Samuel (1805), 5 Esp. 173.

(z) Doe v. Lines (1848), 11 Q. B. **402.**

(a) Doe v. Bell (1793), 5 T. R. 471. (b) See judgment of Coltman, J.,

in Berrey v. Lindley (1841), 3 M. & Gr. 498, p. 513.

(c) Doe v. Stratton (1828), 4 Bing. 446; Tress v. Savage (1854), 4 E. & B. 36; Doe v. Moffatt (1850), 15 Q. B. 257. See Sauvaye v. Dupuis (1811), 3 Taunt. 410.

(d) Tooker \forall . Smith (1857), 1 H. & N. 732.

from quarter to quarter, his tenancy is held to commence on the quarter-day after his entry (e). Where he has not paid rent for the fraction of a quarter, the period of his entry is taken to be the time of commencement of his tenancy (f); unless the agreement specifies a quarter-day as the day for the first payment of rent (g).

Where tenant enters on different parts of demised premises at different times. In cases where the incoming tenant enters upon different parts of the demised premises at different times, it is sufficient to give half-a-year's notice to quit before the substantial time of entry (h); i.e., the time of entry on the principal part of the premises. In these cases, the question of what is the principal, and what the accessory, must depend upon the relative value and importance of the premises let together, and is a matter for the decision of a jury (i).

(c) FORM OF NOTICE.

The notice to quit should show when the premises are to be given up (k), but it may be expressed in general terms, requiring the tenant to quit at the end of the current year of his tenancy which shall expire next after the end of one half-year from the date of the notice (1), and to avoid any question as to the exact day of determination of the tenancy the notice is usually expressed in the alternative (m). A notice to quit "at the expiration of the present year's tenancy" is sufficient, although it is not apparent on the face of the notice that it was given six months before the period for quitting (n). An obvious mistake in the notice will be corrected; thus, notice served at Michaelmas, 1795, to quit at Lady Day, 1795, was held good for Lady Day, 1796 (o); and a possible but absurd construction of the notice will be rejected in favour of one which will make the notice effectual (p). The intention of the landlord is to be

⁽e) Doe v. Johnson (1806), 6 Esp. 10; Doe v. Stapleton (1828), 3 C. & P. 275

⁽f) Doe v. Matthews (1851), 11 C. B. 675.

⁽g) Sandill v. Franklin (1875), L. R. 10 C. P. 377.

⁽h) See judgment of Lord Ellenborough, C.J., in Doe v. Watkins (1806), 7 East, p. 555; Doe v. Snowden (1779), 2 W. Bl. 1224; Doe v. Spence (1805), 6 East, 120, 123; Doe v. Hughes (1840), 7 M. & W. 139; Doe v. Rhodes (1843), 11 M. & W. 600.

⁽i) Doe v. Howard (1809), 11 East,

^{498, 501.}

⁽k) Goode v. Howells (1838), 4 M. & W. p. 201.

⁽¹⁾ Doe v. Butler (1798), 2 Esp. 589; Doe v. Steel (1811), 3 Camp. at p. 117; Doe v. Smith (1836), 5 A. & E. 350.

⁽m) See Sidebotham v. Holland, [1895] 1 Q. B. p. 389.

⁽n) Doe v. Timothy (1847), 2 C. & K.

^{351.} (o) Doe ▼. Kightly (1796), 7 T. R. 63.

⁽p) Doe v. Culliford (1824), 4 D. & Ry. 248.

looked at, and when language is used which leaves the effect of the notice open to doubt, the rule of construction is to make it sensible and not insensible. On this principle, where a tenant held on a yearly tenancy from Lady Day to Lady Day, and the landlord on the 24th March, 1898, gave her notice to quit "on the 24th June, 1898, or at the end of your current year's tenancy," it was held to be a good notice to quit on the 25th March, 1899 (q). But generally a notice to quit at the end of the current year of the tenancy, served within six months of the date of determination, is not construed as a notice for the end of the following year (r). A notice to quit on one of two days is good, if served six months before the day on which the tenancy commenced (s). Where the tenant simply gives notice of his desire to quit, the sufficiency of the notice may be aided by the reply of the landlord pointing out when the notice will take effect (t).

It is not essential that a notice to quit should be in writing (u)—at least where the tenancy is by parol (x)—or that it should state to whom possession is to be delivered up (y), though if this is stated, it should be done with certainty. A notice to give up possession to "the rector and churchwardens for the time being" has been held bad for uncertainty (z).

An error in the description of the premises will not invalidate the notice if the person to whom it is given has not been misled by it (a), and a mistake in the christian name of the tenant will not be fatal if the notice is kept by him without objection (b). A notice to quit a part only of premises leased together is void (c), Notice to and none the less that the landlord has sold the reversion to the quit part of rest(d); but, in the case of a tenancy from year to year of a holding to which the Agricultural Holdings Acts, 1883 and 1900,

premises.

(q) Wride v. Dyer, [1900] 1 Q. B. 23, 25.

(r) Doe v. Morphett (1845), 7 Q. B. 577, commented upon in Wride v. Dyer, supra; Mills v. Goff (1845), 14 M. & W. 72.

(s) Doe v. Wrightman (1801), 4 Esp. p. 6.

(t) General Assurance Co. v. Worsley (1895), 72 L. T. 358.

(u) Doe v. Crick (1805), 5-Esp. 196.

(x) Bird v. Defonvielle (1846), 2 C. & K. 415; Roe v. Pierce (1809), 2 Camp. 96.

(y) Doe v. Foster (1846), 3 C. B.

215.

(\dot{z}) Doe v. Fairclough (1817), 6 M. & S. 40.

(a) Doe v. Roe (1803), 4 Esp. 185; Doe v. Wilkinson (1840), 12 A. & E. 743.

(b) Doe v. Spiller (1807), 6 Esp. **70.**

(c) Doe v. Archer (1811), 14 East, 245.

(d) Prince v. Evans (1874), 29 L. T. 835. See Doe v. Church (1811), 3 Camp. 71. A notice to quit, given by, or on behalf of, the landlord, may be in the following form,

apply, a landlord is allowed, under sect. 41 of the Act of 1883 (e), to resume possession of a part only of the holding for any of the purposes specified in that section, subject to the conditions imposed by the section.

Certainty in notice.

The notice must be expressed with reasonable certainty. Thus a notice to quit if a breach of covenant is committed (f), or upon a contingency (g), is bad. And the notice is bad if it leaves it uncertain whether the tenant contemplates a surrender rather than a determination of the tenancy by notice (h). It was formerly considered that a notice was not effectual which gave the tenant an option either to go or to stay at an increased rent (i); though the tenant, if he stayed, was bound to pay the increased rent (k). A notice to quit or that the landlord would insist on double rent was good, since it was simply a threat of the statutory penalty, and was not an offer of a new agreement (l). However, it is now settled that the landlord may incorporate with the notice an offer of a new agreement, and the addition of a clause that, if the tenant retained possession of the premises after a specified date, the annual rent would be increased in a specified manner, was

the words between brackets being used when the notice is by an agent:—
To Mr. C. D.

I hereby [as agent for and on behalf of Mr. E. F., your landlord] give you notice to quit and deliver up possession of the premises, situate at —, in the county of —, which you now hold of me [him] as tenant thereof, on the —— day of —— next, or at the expiration of the year of your tenancy thereof, which shall expire next after the end of one half-year from the service of this notice. Dated the —— day of ——, 19—.

E. F.

[R. S., agent for the said E. F.]
A notice to quit, given by, or on behalf of, the tenant, may be in the following form, the words between brackets being used when the notice is by an agent:—
To Mr. E. F.

I hereby [as agent for and on behalf of Mr. C. D., your tenant] give you notice that on the —— day of —— next I shall [he will] quit and deliver up possession of the premises situate at ——, in the county of ——,

which I [he] now hold [holds] of you as tenant thereof. Dated the ——day of ——, 19—. C. D.

[R. S., agent for the said C. D.]

(e) 46 & 47 Vict. c. 61. The 41st section requires the landlord's notice to quit, in such a case, to state that it is given with a view to the use of the land for some or one of the specified purposes, and provides (inter alia) that, in every such case, the provisions of the Act as to compensation (infra, Chap. VII., Sect. 4 (1)) shall apply as on determination of a tenancy in respect of an entire holding.

(f) Muskett v. Hill (1839), 5 Bing. N. C. 694.

(g) Farrance v. Elkington (1811), 2 Camp. 591.

(h) Gardner v. Ingram (1890), 61 L. T. 729.

(i) Doe v. Jackson (1779), 1 Dougl. 175.

(k) Roberts v. Hayward (1828), 3 C. & P. 432.

(l) Doe v. Jackson (1779), 1 Dougl. 175. See Doe v. Goldwin (1841). 2 Q. B. p. 144.

held not to invalidate the prior notice to quit (m). So an intimation that the tenant will not stop unless a reduction is made in the rent operates as a notice to quit, with an offer to go on at a lower rent (n).

(d) BY WHOM NOTICE MAY BE GIVEN.

The notice may in all cases be given either by the landlord— [andlord i.e., the person in whom the legal reversion is vested (o)—or by The notion, thrown out by Lord Mansfield, of a the tenant. tenancy from year to year, in which the lessor binds himself not to give notice to quit, has been long exploded (p). A notice given by the reversioner for the time being can be taken advantage of by persons deriving title through him (q).

In a recent case, during the currency of a yearly tenancy the Assignee of landlord granted a lease of the premises for a term of fourteen years, and shortly afterwards gave the yearly tenant notice to quit. It was held that the notice was bad, on the ground that by the lease the reversion had passed to the lessees, and they alone could validly give such a notice (r).

A notice to quit, given on the part of the landlord, must be Agents. such as the tenant may safely act on at the time of receiving it (s); that is, one which is in fact, and which the tenant has reason to believe to be, then binding on the landlord (t). A notice to quit given without authority will not be made valid by the subsequent adoption or ratification of the landlord (s), save that a notice given by the agent of one joint tenant can be subsequently recognized by the others (u). It is not essential to the validity of a notice to quit given by a general agent, that his agency should appear on the face of the document (x). There is, however, a distinction in this respect between a general agent and one having a special or limited authority (x), and, in the case of the latter, it would appear that a notice is bad if it does not state that it is given by authority or in the name of the principal (y).

- (m) Ahearn v. Bellman (1879), 4 Ex. D. 201.
- (n) Bury v. Thompson, [1895] 1 Q. B. 231; aff. 72 L. T. 187.
- (o) See Doe v. Baker (1818), 8 **Taunt. 241.**
- (p) Per Lawrence, J., in Doe v. Browne (1807), 8 East, p. 167.
- (q) Doe v. Forwood (1842), 3 Q. B. 627. See Burton v. Dickenson (1867), 17. L. T. 264.
 - (r) Wordsley Brewery Co. v. Hal-

- ford (1903), 90 L. T. 89.
- (s) Doe v. Goldwin (1841), 2 Q. B. 143; Doe v. Walters (1830), 10 B. & C. 626.
- (t) Jones v. Phipps (1868), L. R. 3 Q. B. p. 572.
- (u) Goodtitle \mathbf{v} . Woodward (1820), 3 B. & A. 689.
 - (x) See note (t), supra.
- (y) See Jones v. Phipps (1868), L. R. 3 Q. B. 567; Doe v. Goldwin (1841), 2 Q. B. 143.

An agent to receive rents and to let has authority to determine tenancies (z). The acting steward of a corporation can give notice, although he has not been appointed under seal (a). But notice given by an agent of an agent requires the recognition of the principal (b).

Cases under Land Transfer Act, 1897. In cases of death after the 31st December, 1897, real estate devolves upon the personal representatives of the deceased, and while it remains vested in them they are the proper persons to give notice to quit; but, save under exceptional circumstances, the notice should only be given at the instance of the heir-at-law or devisee (c).

Cestui que trust.

Receiver.

A cestui que trust, who has been permitted for many years by the trustees to have the entire management of the trust estates (d), and a receiver appointed by the Court of Chancery, with a general authority to let lands to tenants from year to year (e), are deemed general agents, and may give valid notices to quit in their own names. But a cestui que trust, who has not been held out as the agent of the trustees, can neither give nor receive notice (f).

Joint tenant.

A notice to quit, signed by one of two joint tenants on behalf of the other, is sufficient to put an end to a tenancy from year to year as to both (g).

(e) TO WHOM NOTICE IS TO BE GIVEN.

A notice to quit proceeding from the landlord must be served upon the original tenant or his assignee (h). Since there is no privity of contract between the landlord and an undertenant, the landlord cannot entitle himself to recover against such undertenant by giving a notice to quit in his own name (h). Where A, the original tenant, quits possession, and is succeeded by B, it is generally to be presumed that B. is the assignee of A, and notice

(z) Doe v. Mizen (1837), 2 Moo. & R. 56. See E. of Erne v. Armstrong (1872), Ir. R. 6 C. L. 279.

(a) Roe v. Pierce (1809), 2 Camp. 96. See Doe v. Bold (1847), 11 Q. B. 127.

(b) Doe v. Robinson (1837), 3 Bing. N. C. 677.

(c) Supra, p. 61.

(d) Jones v. Phipps (1868), L. R. 3

(e) Wilkinson v. Colley (1771), 5 Burr. 2694; Doe v. Read (1810), 12

East, 57. (f) Easton v. Penney (1892), 67

L. T. 290.

(g) Doe v. Summersett (1830), 1 B. & Ad. 135; Doe v. Hughes (1840), 7 M. & W. 139, 141; Alford v. Vickery (1842), Car. & M. 280. See Doe v. Hulme (1820), 2 M. & Ry. 433; Doe v. Chaplin (1810), 3 Taunt. 120; Jacobs v. Seward (1872), L. R. 5 H. L. 464. As to notice by executors, see Right v. Cuthell (1804), 5 East, 491; by partners, Doe v. Eliot (1828), 2 M. & Ry. 433.

(h) Pleasant v. Benson (1811), 14

East, 234.

may be served on B. (i). Where the tenant from year to year is dead, notice served on his widow is good, unless it is shown that some other person is executor or administrator (k); and it is not invalidated by the subsequent appointment of an administrator (l). If notice is to be given to the lessor or his assigns, it must be given to each assign, though the assigns are trustees (m).

(f) MODE OF SERVICE OF NOTICE TO QUIT.

In the case of holdings to which the Agricultural Holdings 1. Service on Acts, 1883 and 1900, apply, the mode of service of a notice to quit is governed (n) by the 28th section of the Act of 1883, which is as follows:—"Any notice, request, demand, or other instrument 46 & 47 Vict. under this Act may be served on the person to whom it is to be given either personally or by leaving it for him at his last known place of abode in England, or by sending it through the post in a registered letter addressed to him there; and, if so sent by post, it shall be deemed to have been served at the time when the letter containing it would be delivered in ordinary course; and, in order to prove service by letter, it shall be sufficient to prove that the letter was properly addressed and posted, and that it contained the notice, request, demand, or other instrument to be served."

At common law it is not necessary that the notice should be directed to the tenant if it can be proved to have been delivered to him in proper time (o); and his own references to the receipt of the notice may be relied on for this purpose (p). It may be either served upon him personally, or upon his attorney (q); or it may be left with his wife (r), or servant (s), at his dwellinghouse (t), but in this case an explanation of the nature of the notice should be given at the time when it is served (u). not necessary that it should be delivered by the servant to the

(i) Doe v. Williams (1826), 6 B. & C. 41.

(k) Rees v. Perrot (1830), 4 C. & P. **230.**

(1) Sweeney v. Sweeney (1876), Ir. **R.** 10 C. L. 375.

(m) Quartermaine v. Selby (1889), 5 T. L. R. 223.

(n) Van Grutten v. Trevenen, [1902]

2 K. B. 82.

(o) Doe v. Wrightman (1801), 4 Esp. 5.

(p) Doe v. Hall (1843), 5 M. & Gr.

795.

(q) See Doe v. Ongley (1850), 10 C. B. 25.

(r) See Pulteney v. Shelton (1799), 5 Ves. 147; Roe ∇ . Street (1834), 2 A. & E. 329; Smith v. Clark (1840), 9 Dowl. 202.

(s) School Board for London v. Peters (1902), 18 T. L. R. 509.

(t) Jones \forall . Marsh (1793), 4 T. R. 464.

(u) See Doe v. Lucas (1804), 5 Esp. 153.

c. 61, s. 28.

tenant before the commencement of the six months (x), or indeed at all, provided the servant can be considered as the tenant's agent to receive the notice (y).

A notice put under the door of the tenant's house is valid, if it can be proved to have come to the tenant's hands half-a-year before the expiration of the current year of the tenancy (z). But where it is provided that the notice shall be delivered to the tenant or his assignees, and the tenant, after having mortgaged the premises by subdemise, disappears, it seems that no notice can be served. Notices sent to the lessee's last known address, or to the mortgagee, or to the occupier, are all equally ineffectual (a).

Joint tenants.

The service of a notice upon the demised premises on one of two tenants holding under a joint demise, is presumptive evidence that the notice reached the other (b), though it seems that notice to one of two tenants in common or joint tenants is sufficient apart from any such presumption (c).

Corporation.

Where a corporation is the tenant, the notice to quit may be served on its officers (d).

2. Service on landlord.

If the notice proceeds from the tenant, it should be given to his immediate landlord or to the attorney or agent of such landlord authorized to receive such notices, and not to a mere collector of rents (e). When a notice is sent by post to the landlord or his agent, it seems that the day on which the letter is delivered will be considered as the time at which the notice is given (f). But if the posting is proved, it will be presumed that the letter was delivered in due course of post (g). It is sufficient if the notice sent by post can be proved to have reached the office of the person on whom it is served at any time during the last day on which service can be made, although after business hours (h).

Memorandum of service.

At the time of service of a notice to quit, a memorandum of the fact of such service should be indorsed upon a duplicate of

(x) Doe v. Dunbar (1826), Moo. · & M. 10.

(y) Tanham v. Nicholson (1872), L. R. 5 H. L. 561. See Liddy v. Kennedy (1871), L. R. 5 H. L. 134.

(z) Alford v. Vickery (1842), Car. & M. 280.

(a) Hogg v. Brooks (1885), 15 Q. B. D. 256. See, too, Seaward v. Drew (1898), 67 L. J. Q. B. 322.

(b) Doe v. Watkins (1806), 7 East, 551. (c) Doe v. Crick (1805), 5 Esp. 196. (d) Doe v. Woodman (1807), 8 East. 228.

(e) Pearse v. Boulter (1860), 2 F. & F. 133.

(f) See Reg. v. Shawstone (1852), 18 Q. B. 388; Reg. v. Recorder of Richmond (1858), E. B. & E. 253.

(g) Gresham House Estate Co. v. Rossa Gold Mining Co. (1870), W. N.

(h) See Papillon v. Brunton (1860). 5 H. & N. 518, 522. the notice (i). The duplicate can be given in evidence without notice to produce the original (k), and the indorsement, if made in the ordinary course of business, is admissible in evidence after the death of the person who made it (l), though an oral statement, explaining it and not so made, is not admissible (m).

(g) WAIVER OF NOTICE TO QUIT.

If, after the expiration of a notice to quit, the parties by their acts unmistakably acknowledge a subsisting tenancy between them, the notice will be deemed to be waived (n). A second second notice notice to quit is considered as such an acknowledgment (o), unless, under the circumstances of the case, the person to whom it is given would not understand it as waiving the former notice (p).

A landlord may waive a notice to quit by accepting, either Acceptance personally (q), or by an agent specially authorized to receive it (r), rent (q) due for the occupation of the premises after the expiration of the notice (s), though only for a single day (t); but such acceptance of rent is only evidence of waiver to go to the jury (s). It is no waiver if in fact it is accepted in lieu of double rent under 4 Geo. 2, c. 28, s. 2 (s). A receipt for rent, stipulating that the acceptance shall not operate as a waiver, does not require an agreement stamp (u).

A distress for rent, on the other hand, is an express confirma- Distress. tion of the tenancy, and operates in itself as a waiver of the notice (x). A tenant who submits to the distress acknowledges a tenancy (y), but till a new tenancy has been created the landlord is not entitled to distrain, and his proper remedy is an action for use and occupation (z). But after verdict in

```
(i) See Doe v. Turford (1832), 3
B. & Ad. 890; Doe v. Somerton (1845),
7 Q. B. 58.
```

(k) Doe v. Somerton, supra.

(1) Doe v. Turford, supra. (m) Stapylton v. Clough (1853), 2

E. & B. 933. (n) See Doe \forall . Palmer (1812), 16 East, 53, 56.

(o) Per Lord Ellenborough, in Doe

v. Palmer, 16 East, p. 56. (p) See Doe v. Humphreys (1802),

2 East, p. 240; Doe v. Steel (1811), 3 Camp. p. 117.

(q) Goodright ∇ . Cordwent (1795),

6 T. R. 219.

(r) See Doe v. Calvert (1810), 2 Camp. 387.

(s) See Doe v. Batten (1775), Cowp. 243.

(t) Keith, Prowse & Co. v. National Telephone Co., [1894] 2 Ch. 147.

(u) Doe v. Fuller (1835), Tyr. & G.

(x) Zouch \mathbf{v} . Willingale (1790), 1 H. Bl. 311.

(y) Panton v. Jones (1813), 3 Camp. **372.**

(z) Alford \forall . Vickery (1842), Car. & M. 280.

ejectment, founded on notice to quit, distress is no waiver of the notice (a).

Bolding over.

A mere demand of rent, due after the expiration of the notice (b), or a holding over or accidental detention of the key by the tenant after that event (c), does not necessarily operate as a waiver of the notice. Such matters are evidence of intention for the jury (b).

Withdrawal of notice.

When a valid (d) notice to quit is given by landlord or tenant, the party to whom it is given is entitled to count upon it, and it cannot be withdrawn without the consent of both parties. If such consent is given, there is a new agreement between the parties, and a new tenancy is created which exists only under that new agreement (e); consequently a guarantor of the rent under the original tenancy is not liable for rent which became due after the time when the notice would have expired (f). An agreement by the landlord, at the request of the tenant, to suspend the exercise of his rights under the notice to quit, will not operate as a waiver of the notice, or as a licence to the tenant to be on the premises otherwise than subject to the landlord's right of acting on such notice if necessary (g).

Dispensing with notice.

If at the end of a year, in a tenancy from year to year, the landlord accepts another tenant in the room of the former, this is equivalent to dispensing with notice to quit (h).

Acquiescence in irregularity.

Irregularity in the notice may be cured by acquiescence on the part of the party to whom it is given (i); though for this purpose a mere agreement after the expiry of the notice to give up the key is not enough (k). And the landlord's acquiescence in a short notice does not bind him to accept it if he subsequently insists on full notice (l).

- (a) Doe v. Darby (1818), 8 Taunt. 538.
- (b) Blyth v. Dennett (1853), 13 C. B. 178.
- (c) Jenner v. Clegg (1832), 1 Moo. & Rob. 213, 215; Gray v. Bompas (1862), 11 C. B. N. S. 520. See Jones v. Shears (1836), 4 A. & E. 832.
- (d) See Doe v. Milward (1838), 3 M. & W. 328.
- (e) But it has been held in Ireland that a notice to quit, abandoned during its currency by consent of both parties, does not in itself put an end to a tenancy from year to year: Inchiquin v. Lyons (1887), 20 L. R. Ir. 474.
 - (f) Tayleur v. Wildin (1868), L. R.

- 3 Ex. 303, 305; Blyth v. Dennett (1853), 13 C. B. 178; Vance v. Vance (1871), Ir.R. 5 C. L. 363. See Giddens v. Dodd (1856), 3 Drew. 485.
- (g) Whiteacre v. Symonds (1808). 10 East, p. 16; School Board for London v. Peters (1902), 18 T. L. R. 509.
- (h) Sparrow v. Hawkes (1797), 2 Esp. 505.
- (i) Shirley v. Newman (1795), 1 Esp. 266.
- (k) Brown v. Burtinshaw (1826), 7 D. & Ry. 603.
- (l) Bessell v. Landsberg (1845), 7 Q. B. 638; Johnstone v. Hudlestone (1825), 4 B. & C. 922; Doe v. Johnston (1825), M.Cl. & Y. 141.

(iii) By verbal Disclaimer.

If a tenant from year to year, verbally (m), or in writing, what unequivocally denies the title of his landlord, and renounces his amounts to a character of tenant, either by setting up title in another, or by claiming title in himself (n), the tenancy may be forthwith determined by the landlord without any notice to quit (o). It seems that whether a particular expression does or does not amount to a disclaimer is a question for the decision of a jury (p). An omission to acknowledge the landlord as such, by requesting further information, will not be enough; nor will a mere refusal to pay rent. A refusal to deliver possession, or a declaration by the tenant that he will continue to hold possession, at a time when the landlord has no right to claim it, cannot have the effect of a disclaimer (q).

(4) DETERMINATION OF TENANCIES FOR TERMS OF YEARS.

Where the demise is for a term certain, no notice to quit is ' required at the end of the term (r), and so where the lease is to determine on a certain event (s). If under an agreement for a tenancy of buildings for a term the landlord is to do repairs, there is no implied condition that the tenant may quit if the repairs are not done (t). Where there is a lease by a partner to himself and his co-partners for the use of the firm, the lessor

(m) Doe v. Wells (1839), 10 A. & E. 427. But a lease for a term cannot be forfeited by mere words, S. C.

(n) Per Tindal, C.J., in Doc v. Cooper (1840), 1 M. & Gr. p. 139. See Jones v. Mills (1861), 10 C. B. N. S. 788, 796; Doe v. Cawdor (1834), 1 Cr. M. & R. 398; Hunt v. Allgood (1861), 10 C. B. N. S. 253.

(o) Vivian v. Moat (1881), 16 C. D. 730; Throgmorton v. Whelpdale (1769), Bull. N. P. 96; Doe v. Whittick (1820), Gow, 195; Doe v. Pasquali (1794), Peake, N. P. C. p. 197; Doe v. Frowd (1828), 4 Bing. 557; Doe v. Grubb (1830), 10 B. & C. 816; Doe v. Price (1832), 9 Bing. 356, 358; Doe v. Pittman (1833), 2 Nev. & M. 673; Doe ▼. Rollings (1847), 4 C. B. 188; Doe v. Erans (1841), 9 M. & W. 48; Doe **▼.** Gower (1851), 17 Q. B. 589. (p) See Doe v. Long (1841), 9 C. &

P. 773.

(q) See judgment in Doe v. Stanion (1836), 1 M. & W. p. 703.

(r) Cobb v. Stokes (1807), 8 East, 358. A term of years lasts during the whole anniversary of the day from which it is granted. Hence a lease for twenty-one years from 25th March, 1809, did not expire till the end of 25th March, 1830; Ackland v. Lutley (1839), 9 A. & E. 879. See Cutting v. Derby (1776), 2 W. Bl. 1075. And as to an agreement under which part of the premises are to be retained for a further period, see Doe v. Houghton (1827), 1 Man. & Ry. 208.

(s) Right v. Darby (1786), 1 T. R. 159, per Lord Mansfield, C.J., p. 162. (t) Surplice v. Farnsworth (1844), 7 M. & Gr. 576.

can recover possession upon a dissolution without notice to the other partners to quit (u).

Tenancies for optional terms.

By whom option may be exercised.

If a lease is made determinable at certain specified periods, and nothing is said as to the person by whom the option is to be exercised, the lessee only can exercise it (x), and specific performance of an agreement for a lease with such an option will be decreed, although the lessor understood that he was to have the option as well (y). If the lessee has assigned, it is for the assignee for the time being to exercise the option, and, if he has disappeared, neither the lessee nor a previous assign can determine the lease, notwithstanding that they are liable to pay the rent (z). If the option is in a lease under seal, an abandonment of it is not effectual unless also under seal (a).

But a lease which is made determinable "if the parties think fit," is determinable only by consent of both parties (b). A proviso whereby the option to determine a lease is given to either of the parties, his executors or administrators, extends to the devisee of the lessor, who is entitled to the rent and reversion (c). Where the proviso requires notice to be given in writing of the intention to exercise the option to determine the lease, such notice will be good though given in the form of a notice to quit (d), but it may not be by parol (e).

The notice will be invalid if it varies from the terms of the proviso as to the time at which the option is to be exercised (f).

(u) Doe v. Bluck (1838), 8 C. & P. 464; Doe v. Miles (1816), 1 Stark. 181.

(x) Price v. Dyer (1810), 17 Ves. at p. 363; Dann v. Spurrier (1803), 3 B. & P. 399; overruling Goodright v. Richardson (1789), 3 T. R. 462; 7 Ves. 231; Doe v. Dixon (1807), 9 East, 15.

(y) Powell v. Smith (1872), 14 Eq. 85.

(z) Seaward v. Drew (1898), 67 L. J. Q. B. 322.

(a) Goodright v. Mark (1815), 4 M. & S. 30.

(b) Fowell v. Tranter (1864), 3 H. & C. 458.

(c) Roe v. Hayley (1810), 12 East, 464; 11 R. R. 455.

(d) Giddens v. Dodd (1856), 3 Drew. 485. Notice may be given by the lessee in the following form:—
To Mr. E. F.

I hereby give you notice that I am

desirous of putting an end to the term granted by an indenture of lease dated the —— day of ——, 19—, and made between [yourself] of the one part and [myself] of the other part, at the end of the first [seven] years of the said term, in pursuance of a proviso contained in the said lease. Dated the —— day of ——, 19—.

C. D.

For a case of a power for heirs, executors, &c., of either party dying within the term to give notice, see Legg v. Benion (1737), Willes, 4%. As to notice to determine a lease made by the Commissioners of Woods and Forests, see Coombes v. Dutton (1839), 5 M. & W. 469.

(e) Legg v. Benion (1737), Willes, 43.

(f) See Cadby v. Martinez (1840), 11 A. & E. 720.

The period for which notice may be given is to be reckoned from the date for the commencement of the term, and not from the date of the lease (g).

A condition depending on the lease being determined, and the lessee "leaving" the house, is satisfied, although the lessee continues after the determination of the lease to reside in the house with a new lessee (h).

Where a lease has been determined by the lessee under a power enabling him to determine it, the lessor can maintain an action against the lessee for a breach of covenant existing at the time of the determination of the lease, notwithstanding that the lessor's right so to do was not expressly reserved (as it usually is) in the lease (i).

(5) DETERMINATION OF TENANCIES FOR LIFE.

By the Cestui que Vie Act, 1707 (k), s. 1, provision is made for the production of a cestui que vie at the instance of the remainderman, and in default of production the remainderman may enter as though the cestui que vie were dead (1). The tenant for life may re-enter if the cestui que vie is afterwards proved to be alive (m). The Court cannot order the remainderman to pay to the tenant pur autre vie the costs of producing the cestui que vie(n).

SECT. II.—MODES OF DETERMINATION GENERALLY APPLICABLE.

(1) MERGER.

Merger occurs where a greater and a less estate coincide and When merger meet in one and the same person, without any intermediate estate (o); as, for instance, when tenant for years obtains the fee (p). The doctrine of merger is illustrated in the judgment of the King's Bench delivered by Bayley, J., in Doe v. Walker (q), with reference to the case of a term of years and an estate pur autre vie. If, it was said, a tenant for years acquires a life interest

- (g) Bird v. Baker (1858), 1 E. & E. 12.
- (h) Lucas v. Rideout (1868), L. R. 3 H. L. 153.
- (i) Blore v. Giulini, [1903] 1 K. B **356.**
- (k) 6 Anne, c. 72. See also 18 & 19 Car. 2, c. 11.
 - (1) See 6 Anne, c. 72, s. 2, as to

the mode of procedure when the cestui que vie is beyond seas.

(m) 6 Anne, c. 72, s. 3.

- (n) Re Isaac (1838), 4 M. & Cr. 11.
- (o) See Burton v. Barclay (1831), 7 Bing. 745, 756.
 - (\bar{p}) 2 Black. Com. 177.
 - (q) (1826), 5 B. & C. p. 121.

in the estate pur autre vie, the two being concurrent, one only can exist, and the other is merged; but there is no inconsistency or incompatibility in a man's having, not two concurrent, but two successive estates. If a lease for years be granted to a tenant pur autre vie, to commence when his life estate ceases, he will be tenant of the freehold, so long as cestui que vie lives, but amenable to the reversioner for every duty to which that tenancy is subject; and he will be tenant for the term when cestui que vie dies, and still amenable to the reversioner for all the duties of that tenancy. He will never stand in the character, which the law of merger is calculated to prevent, of reversioner to himself. And there is no merger where a lessee grants to his sublessee the residue of his interest from the termination of the sublease (r). This is a grant of an interesse termini, which is only a right, not an estate, and which will neither cause nor prevent a merger (r).

Where two terms of years, one in possession and the other in reversion, meet in the same person, so that a merger takes place, it is the estate in reversion that survives, although it is for a shorter term (s). Thus a term for one thousand years can be merged in a reversionary term for five hundred years (t).

No merger unless in equity. It is now provided that there shall not be any merger by operation of law only of any estate, the beneficial interest in which would not be deemed to be merged or extinguished in equity (u). In equity the question of merger is governed by the intention, actual or presumed, of the person in whom the interests are united (x). The Court looks to the benefit of the person in whom the two interests coalesce; and there is no distinction in this respect between a beneficial lease and a term to secure a charge. In either case the term is taken as an equivalent for money expended (y). There is no merger where the interests are taken in different rights (z). Thus where C., an administrator, granted an underlease, and the underlessee assigned to

⁽r) Hyde v. Warden (1877), 3 Ex. D. 72, 84.

⁽s) Bac. Abr. (S. 1 (2)), 876.

⁽t) Stephens v. Bridges (1821), 6 Madd. 66.

⁽u) Judicature Act, 1873, s. 25 (4); Capital and Counties Bank v. Rhodes, [1903] 1 Ch. 631, at p. 653.

⁽x) Forbes v. Moffatt (1811), 18 Ves. p. 390, per Grant, M.R. See Snow v. Boycott, [1892] 3 Ch. 110.

⁽y) Per Farwell, J., in Ingle v. Vaughan Jenkins, [1900] 2 Ch. 368, at p. 370; approved in C. A., Capital and Counties Bank v. Rhodes, supra.

⁽z) Chambers v. Kingham (1878). 10 Ch. D. 743; and apparently not at law, at any rate if the union of the interests is not due to the act of the party: Platt v. Sleap (1612), Cro. Jac. 275; Jones v. Daries (1860), 5 H. & N. 766; 7 H. & N. 507.

C. for the residue of the term, it was held that there was no merger (a). Merger is sometimes provided against by taking a conveyance of one estate to a trustee (b); but, if the intention is clearly expressed, this device is needless. In the absence, however, of any intention to keep the term alive, it will merge in the reversion, and the covenants attached to it will be extinguished (c).

Formerly, where the reversion upon a sublease was merged Effect on in the fee, the covenants in the sublease were destroyed (d); but now it is enacted (e) that when the reversion expectant on a lease shall merge, the estate which shall for the time being confer as against the tenant under the same lease the next vested right to the hereditaments shall, to the extent and for the purpose of preserving such incidents to and obligations on the same reversion as but for the merger thereof would have subsisted, be deemed the reversion expectant on the same lease (f).

Although a lease is merged by the purchase of the reversion, the owner may be bound in equity to observe the building covenants attached to it (g).

(2) SURRENDER.

Express.

To constitute a valid express surrender, it is essential that it Surrender should be made to and accepted by the owner of the immediate how made. estate in reversion or remainder (h).

Any form of words whereby such an intent and agreement of the parties may appear will be sufficient to work a surrender; and the law will direct the operation and construction of the words accordingly, without the precise or formal mention of the word surrender (i). Lessee for years may surrender to a leasehold

(a) Chambers v. Kingham (1878), 10 Ch. D. 743; approved in C. A., Capital and Counties Bank v. Rhodes, supra.

(b) See Belaney v. Belaney (1867),

L. R. 2 Ch. 138.

(c) See Dynevor v. Tennant (1888), 13 App. Cas. 279.

(d) Webb v. Russell (1789), 3 T. R. 393.

(e) The Real Property Act, 1845 (8 & 9 Vict. c. 106), s. 9; infra, p. 493.

(f) See, too, Conv. Act, 1881,

s. 10.

(g) Birmingham Joint Stock Co. v. Lea (1877), 36 L. T. 843. See, too, Craig v. Greer, [1899] 1 I. R. 258.

(h) Bac. Abr. (S. 1) 873; Cadle v. Moody (1861), 30 L. J. Ex. 385.

(i) Bac. Abr. (S. 1) 873. See Smith v. Mapleback (1786), 1 T. R. 441; Doe v. Stagg (1839), 5 Bing. N. C. 564. The stamp duty on a surrender, not chargeable with duty as a conveyance on sale or mortgage, is ten shillings. (Stat. 54 & 55 Vict. c. 39, Schedule.)

reversioner, although his term exceeds in length that of the reversioner (j). Where the lessor had assigned the reversion under an agreement by which he was still to receive the rent, it was held that the lessee might surrender to the assignee and so stop the rent, notwithstanding that he had had notice of the agreement (k).

Surrender to legal tenant for life.

A legal tenant for life has a common law right to accept the surrender of a lease, and (in the absence, of course, of mala fides) money paid to such a life tenant as the consideration for accepting the surrender belongs to him (l).

Parol surrender void. Parol surrenders are void (m). To be effectual every express surrender must be either by deed or at least in writing, and, unless the interest surrendered might have been created by parol, the surrender must be by deed.

Statute of Frauds (n), s. 3.

Leases to be surrendered by writing.

For the 3rd section of the Statute of Frauds enacts that no leases, estates or interests, either of freehold, or terms of years, or any uncertain interest, not being copyhold or customary interest, in any messuages, manors, lands, tenements, or here-ditaments, shall be assigned, granted or surrendered, unless it be by deed or note in writing, signed by the party so assigning, granting or surrendering the same, or their agents thereunto lawfully authorized by writing, or by act or operation of law.

Stat. 8 & 9
Vict. c. 106,
s. 3.
Surrenders to
be by deed,
except as to
parol
tenancies.

And by the Real Property Act, 1845, a surrender in writing of an interest in any tenements or hereditaments, not being a copyhold interest, and not being an interest which might by law have been created without writing, is void at law unless made by deed (o).

It follows that a parol agreement for the determination of a tenancy is not binding (p), even though the tenancy has been created by parol (q). But where a yearly tenant of a Lady Day holding entered, in December, into a verbal agreement with his landlord that the tenancy should terminate at the following Midsummer, it was held that the agreement amounted to, and

(j) Hughes v. Robotham (1593), Cro. Eliz. 302.

(k) Southwell v. Scotter (1880), 49 L. J. Q. B. 356.

(l) Re Hunloke's Settled Estates, Fitzroy v. Hunloke, [1902] 1 Ch. 941—944. That was a case outside the Settled Land Act, 1882, s. 13, as to which see supra, p. 45.

(m) See Matthews v. Sawell (1818),

8 Taunt. 270.

(n) 29 Car. 2, c. 3.

(o) Formerly a lease for years might be surrendered by writing not under seal: Furmer v. Rogers (1755), 2 Wils. 26.

(p) Thomson v. Wilson (1818), 2 Stark. 379.

(q) Mollett v. Brayne (1809), 2 Camp. 103.

might be construed as, an agreement by the tenant to accept a new tenancy for about six months, terminable at Midsummer, in lieu of his existing tenancy, and that that acceptance worked a surrender of the old tenancy by operation of law (r). The recital in a second lease of the surrender of the first is not equivalent to a surrender by deed or note in writing (s).

Where a lease has been expressly surrendered, and a voidable lease taken in its place, it does not revive upon the new lease being avoided (t).

Implied.

A surrender (u) will be implied (1) from delivery of possession by the lessee to the lessor; (2) acceptance of a new lease by the lessee; (3) grant of a new lease by the lessor to a third person with the consent of the lessee who gives up possession; and (4) the creation of a new relation between the parties inconsistent with that of landlord and tenant.

A surrender may be implied by operation of law from anything 1. Delivery of which amounts to an agreement on the part of the tenant to abandon, and on the part of the landlord to resume possession of the premises (x). An agreement to quit, if conditional, and if the condition is not performed, does not operate as a surrender (y); nor does an agreement to give up the premiser in the future (z).

The following circumstances have been held to amount to a surrender by operation of law: - Delivery by the tenant to the landlord, and acceptance by the landlord of the keys of the demised house, with the intention that there shall be a transfer of possession (a). In this case, however, there must be clear evidence of the acceptance of the key by the landlord (b). The mere fact that he has not sent back the key which the tenant has

⁽r) Fenner v. Blake, [1900] 1 Q. B. 426, 428.

⁽s) Roe v. Archb. of York (1805), 6 East, 86.

⁽t) Doe v. Bridges (1831), 1 B. & Ad. 847.

⁽u) See article in 37 Solicitors' Journal, 539.

⁽x) Per Erle, C.J., in Phenè v. Popplewell (1862), 12 C. B. N. S. p. 340.

⁽y) Coupland ∇ . Maynard (1810), 12 East, 134.

⁽z) Doe v. Milward (1838), 3 M. & W. 328. See Weddell v. Capes (1836), 1 M. & W. 50.

⁽a) Dodd v. Acklom (1843), 6 M. & Gr. 672; Phene v. Popplewell (1862), 12 C. B. N. S. 334. See Whitehead v. Clifford (1814), 5 Taunt. 518; Grimman v. Leyge (1828), 8 B. & C. 324.

⁽b) Cannan v. Hartley (1850), 9 C. B. 634. See Brown v. Burtinshaw (1826), 7 D. & Ry. 603; Furnivall v. Grove (1860), 8 C. B. N. S. 496.

left at his office is not evidence from which a surrender can be implied (c); and if he tries to return the key, his entry for the purpose of repairing and reletting the premises is not such an acceptance of possession as to complete the surrender (d). Even if he keeps the keys, his attempt to get a new tenant (c), or the casual occupation of part of the premises, is not sufficient (f); but it is otherwise if he sets about repairs in such a way as implies that he regards the house as in his own occupation (g). An agreement for giving up the premises may be a surrender, notwithstanding that the tenant is allowed to hold over part without rent (h); though where part is kept at a reduced rent this is not necessarily a surrender and a new tenancy (i).

A parol licence to quit will not of itself operate as a surrender of the tenant's interest; but when the tenant gives up possession in pursuance of such a licence, and the landlord accepts possession, the licence, coupled with the fact of the change of possession, is a surrender by act and operation of law, and the landlord cannot recover any rent which becomes due after his acceptance of the possession (j). If, after the tenant has quitted, the landlord lets to another tenant who occupies, this is a rescission of the first contract of tenancy, and dispenses with a written surrender (k).

2. Acceptance of new lease.

A surrender by operation of law takes place in cases where the owner of a particular estate has been a party to some act the validity of which he is by law afterwards estopped from disputing (l), and which would not have been valid had his particular estate continued to exist. Hence the acceptance by a lessee for years of a new lease from his lessor to commence during the currency of the first lease operates, even though it be a future lease (m), as an immediate surrender, the lessee being estopped from saying that the lessor had not power to grant the new lease (n). The surrender in this case is the act of the law, and

(c) See note (b) on p. 487.

(d) Smith v. Blackmore (1885), 1 T. L. B. 267.

(e) Oastler v. Henderson (1877), 2 Q. B. D. 575; Redpath v. Roberts (1801), 3 Esp. 225.

(f) Oastler v. Henderson, supra.

(y) Smith v. Roberts (1892), 9 T. L. R. 77.

(h) Williams v. Sawyer (1821), 3 Br. & B. 70.

(i) Holme v. Brunskill (1877), 3

Q. B. D. 495.

(j) Per Bayley, J., in Grimman v. Legge (1828), 8 B. & C. p. 325.

(k) Walls v. Atcheson (1826), 3 Bing. 462.

(l) See Fenner v. Blake, [1900] t Q. B. 426, 428, a case of estoppel by conduct.

(m) Ive's Case (1597), 5 Rep. 11 a. (n) Lyon v. Reed (1844), 13 M. & W. 285, per Parke, B., at p. 306. See judgment of Tindal, C.J., in Dodd v.

will prevail in spite of the intention of the parties (o). lease will operate as a surrender, although for a shorter term than the prior lease; and a new valid lease by parol will constitute a surrender of a prior lease by deed (p). But, where the new lease does not pass an interest according to the contract between the parties, the acceptance of it will not amount to a surrender of the former lease (q). For though the acceptance of a new lease generally operates as an implied surrender "by operation of law" within the meaning of sect. 3 of the Statute of Frauds, such a surrender differs from an actual surrender by deed: it is not absolute: it is subject to an implied condition that the new lease is good, and, if that is not so, the old lease remains in force. The lessee, notwithstanding the surrender by operation of law, retains an interest in the original lease, and he is, therefore, entitled to retain the instrument of lease (r).

Again, the acceptance of a void lease (q), or, it is conceived, a voidable lease (s), or the execution of a mere agreement for a new lease (t), will not operate as a surrender. But an agreement for a new lease at an increased rent, which is acted upon, is a surrender of the old lease (u), and it is the same, probably, now with any agreement for a lease which is capable of being specifically enforced by either party, and under which possession has been given and taken (x).

Whether an agreement operates as a demise, or as an agreement only, depends on the intention of the parties (y). An agreement for giving up part of the premises and paying a diminished rent (z), or, where the parties believe the tenancy to have come to an end, for reduction of rent only (a), may be

Acklom (1843), 6 M. & Gr. 679; Fulmerstone v. Steward (1554), Plowd. 106, 107 a; Ive v. Sams (1597), Cro. Eliz. at p. 522; Davison v. Stanley (1768), 4 Burr. 2210; M'Donnell v. Pope (1852), 9 Hare, 705. Cf. Fenner v. Blake, supra.

(o) Lyon v. Reed, supra.

(p) $Dodd \ v. \ Acklom, supra.$

(q) See Doe v. Courtenay (1848), 11 Q. B. 702, 712; Doe v. Poole (1848), 11 Q.B. 713; Zouch v. Parsons (1765), 3 Burr. 1807.

(r) Knight v. Williams, [1901] 1 Ch. 256.

(s) Easton v. Penney (1892), 67 L. T. 290. Though see Roe v. Archb. of York (1805), 6 East, 86.

(t) Foquet v. Moor (1852), 7 Ex. 870. See, too, Graham v. Whichelo (1832), 1 Cr. & M. 188; judgment of Holroyd, J., in Hamerton v. Stead (1824), 3 B. & C. p. 482; and cf. Porry v. Allen (1590), Cro. Eliz. 173.

(u) Ex parte Vitale (1883), 47 L. T.

480.

(x) See Walsh v. Lonsdale (1882), 21 Ch. D. 9; supra, p. 81.

(y) Sidebotham v. Holland, [1895]

1 Q. B. 378, 385. (z) Jones v. Bridgman (1878), 39

L. T. 500. Cf. supra, p. 488, note (i). (a) Hodges v. Lawrance (1854), 18 J. P. 347.

equivalent to a new demise, and so operate as a surrender; but this result does not follow from a mere abatement (b), or agreement for the reduction of rent made during the continuance of the tenancy (c); or from an agreement for the increase of rent (d), where the extra sum agreed upon would not bind an assignee of the lease (e).

An attornment by the lessee to the sequestrators of the lessor is not necessarily a surrender of the lease (f). An acceptance of a new lease for part of the demised premises is a surrender only of that part (g).

3. Grant by landlord of new lease to third person, with consent of prior tenant who gives up possession.

The grant of a new lease, by the landlord, to a third person, with the assent of the tenant, who gives up his own possession to the new lessee (h); or the acceptance by the landlord, with the assent of a tenant from year to year (i) or for a term (k), of another person as tenant, who takes possession (l), operates as a surrender by operation of law. The essential element is the change of possession. The grant of a new lease in possession, with the oral assent merely of a person in possession under a prior subsisting lease, does not operate as a surrender in law of such prior lease (m). It is further necessary that the old tenant should give up possession to the new tenant at or about the time of the grant of the new lease (n). There is no surrender upon negotiations for a lease to a third person, if the grant of the new lease is ultimately refused (o); but a surrender may be implied from an agreement for a lease to the old and a new tenant

(b) Clarke v. Moore (1844), 1 Jo. & Lat. 723, p. 728.

(c) Crowley v. Vittey (1852), 7 Ex.

319.
(d) Inchiquin v. Lyons (1887), 20
L. R. Ir. 474; Geekie v. Monk (1844),
1 C. & K. 307. See Doe v. Geekie
(1844), 5 Q. B. 841.

(e) Donellan v. Read (1832), 3 B. & Ad. 899.

(f) Cornish v. Searell (1828), 8 B. & C. 471.

(g) E. of Carnarvon v. Villebois (1844), 13 M. & W. 313, 342; Fish v. Campion (1601), 2 Rol. Abr. 498.

(h) Davison v. Gent (1857), 1 H. & N. 744; M'Donnell v. Pope (1852), 9 Hare, 705. See Rex v. Banbury (1834), 1 A. & E. 136; Nickells v. Atherstone (1847), 10 Q. B. 944; Reeve v. Bird (1834), 1 Cr. M. & R. 31. (i) Thomas v. Cook (1818), 2 B. & A. 119; Stone v. Whiting (1817), 2 Stark, 235.

(k) Reeve v. Bird (1834), 1 Cr. M. & R. 31.

(l) Taylor v. Chapman (1795), Peake, Add. Cas. 19.

(m) Thomas v. Cook, which was at one time thought to countenance the opposite view, may be explained by change of possession: see Lyon v. Reed (1844), 13 M. & W. 285, 309; Creagh v. Blood (1845), 3 Jo. & Lat. p. 160. Walker v. Richardson (1837), 2 M. & W. 882, so far as it adopted the doctrine that change of possession was not necessary, is overruled.

(n) Wallis v. Hands, [1893] 2 Ch. 75; Doe v. Johnston (1825), M'Cl. & Y. 141.

(o) Dawson v. Lamb (1852), 3 C. & K. 269.

jointly under which the tenants occupy (p). An exchange between two tenants holding under different landlords, the exchange being with the assent of the landlords, operates as a surrender and the creation of a new tenancy as to each holding (q).

The acceptance of a new tenant is a question of fact for the jury (r), and it is not sufficient, where executors are the landlords, to prove acceptance by one executor only (s).

Where an undertenant is in possession, the acceptance of such undertenant as tenant by the lessor may be proved by his having accepted the key from the original lessee, or by his acceptance of rent from the undertenant, or by some act tantamount to it (t). Receipts for rent received by a landlord from a third person have been said to be strong evidence of a change of tenancy with the consent of the landlord, amounting to a surrender by operation of law (u); but they are equally consistent with such third person being an assignee of the lease (x). Where the widow of the tenant pays rent to the landlord, this does not, in the absence of assent by his personal representative, operate as a surrender (y).

The creation of a new relation in regard to the demised pro- 4. Creation of perty, wholly inconsistent with that of landlord and tenant (z), relation. operates as a surrender; as, for instance, where the tenant becomes the servant or caretaker of the landlord, accounting to him! for all the profits of the demised premises, and being allowed fixed daily wages (z). A contract of purchase by the tenant is not in itself a surrender of the lease, since the contract implies a condition of good title (a). A redemise by the lessee to the lessor for the whole term with a reservation of rent works a surrender (b), and the rent is only recoverable as a sum in gross (c).

The mere cancelling of a lease is not a surrender by operation Cancelling of of law of the term thereby granted (d), or primâ facie evidence of

```
(p) Hamerton v. Stead (1824), 3
B. & C. 478.
```

⁽q) Bees v. Williams (1835), 2 Cr. M. & R. 581.

⁽r) Woodcock v. Nutt (1832), 8 Bing. 170.

⁽s) Turner \forall . Hardey (1842), 9 M. & W. 770.

⁽t) Per Lord Kenyon, C.J., in Harding v. Crethorn (1793), 1 Esp. 57.

⁽u) Lawrance **v.** Faux (1861), 2 F. & F 435.

⁽x) Copeland ∇ . Watts (1815), 1 Stark. 96.

⁽y) Doe v. Wood (1845), 14 M. &

W. 682.

⁽z) Peter v. Kendal (1827), 6 B. & C. 703, 710; Lambert v. M'Donnell (1864), 15 Ir. C. L. R. 136.

⁽a) Doe v. Stanion (1836), 1 M. & W. 695; Tarte v. Darby (1846), 15 M. & W. 601, 606.

⁽b) Loyd v. Langford (1777), 2 Mod. 174; Smith v. Mapleback (1786), 1 T. R. 441. See Doe v. Ridout (1814), 5 Taunt. 519.

⁽c) Smith v. Mapleback, supra.

⁽d) Roe v. Archbishop of York (1805), 6 East, 86; Wootley v. Gregory (1828), 2 Y. & J. 536.

a surrender by deed or in writing (e). The cancelling does not destroy the estate vested in the lessee, and the lessor can still sue for recovery of rent (f).

Rent after Surrender.

No rent accrues due after the surrender of a lease (g), though, if the lease is by deed, and contains a covenant for payment, the lessor remains a specialty creditor for rent accrued due before the surrender (h). Where the demise was by parol, he can recover such accrued rent in an action for use and occupation under 11 Geo. 2, c. 19, s. 14 (i).

Whether there is a surrender or no, the tenant can excuse himself from payment of rent by showing a contract by the landlord to abandon the rent if the tenant gave up possession (k).

Operation of Surrender.

Rights of third persons.

Though a surrender operates between the parties as an extinguishment of the interest which is surrendered, it does not so operate as to third persons who, at the time of the surrender, had rights which such extinguishment would destroy. As to them the surrender operates only as a grant subject to their right, and the interest surrendered still continues so far as is necessary for the preservation of their right (l). A lessee can, by a surrender, give title to his lessor only to the same extent as he could give it to another person by his assignment. He has no power to effect by surrender anything that he could not do by assignment to a third person; the reason being that he cannot convey to his landlord, any more than to any one else, anything that he has not got (m). In this respect a surrender differs from a forfeiture, and the rights of underlessees are preserved, although at the time of the surrender the term was liable to forfeiture (n). So a mortgagee of tenant's fixtures can enter and

(e) Doe v. Thomas (1829), 9 B. & C. 288.

(f) Ward v. Lumley (1860), 5 H. & N. 87.

(g) Southwell v. Scotter (1880), 49 L. J. Q. B. 356.

(h) Att.-Gen. v. Cox (1850), 3 H. L. C. 240.

(i) The Distress for Rent Act, 1737; see Shaw v. Lomas (1888), 59 L. T. 477; supra, p. 330.

(k) Gore v. Wright (1838), 8 A. & E.

118. See Smith v. Lovell (1850), 10 C. B. 6, p. 22.

(1) Co. Litt. 338 b; Doe v. Pyke (1816), 5 M. & S. p. 154; Pleasant v. Benson (1811), 4 East, 234, 238. See Mellor v. Watkins (1874), L. R. 9 Q. R. 400; Pike v. Eyre (1829), 9 B. & C. 909, 914.

(m) Per Channell, J., in Walter v. Yulden, [1902] 2 K. B. at p. 310.
(n) G. W. Ry. Co. v. Smith (1875).

2 Ch. D. 235. See 3 App. Cas. 165.

remove them notwithstanding the surrender (o), provided he does so within a reasonable time (p); and so can a purchaser of fixtures from a trustee in bankruptcy who surrenders the lease (q). But the assignee of future crops takes them subject to the landlord's rent and to the expenses of cultivation subsequent to the surrender (r).

Building covenants affecting the demised premises may be enforceable in equity notwithstanding that at law they have been extinguished by a surrender (s). But it has been said not to be clear that the doctrine that the rights of third parties cannot be prejudiced by a surrender applies to rights acquired under a covenant or regrant taken in the lease for the benefit of the lessor (t).

By virtue of the Real Property Act, 1845, the surrender of a Underlessees. lease places the lessor in the position of immediate lessor to underlessees of the demised premises; the 9th section of that Stat. 8 & 9 Act providing that, when the reversion expectant on a lease of any tenements or hereditaments is surrendered or merges, the estate which for the time being confers, as against the tenant under the same lease, the next vested right to the same tenements or hereditaments, shall, to the extent and for the purpose of preserving such incidents to and obligations on the same reversion, as, but for the surrender or merger thereof, would reversion. have subsisted, be deemed the reversion expectant on the same lease.

Surrender and Renewal.

By 4 Geo. 2, c. 28 (u), s. 6, where a lease is duly surrendered in order to be renewed and a new lease granted, the new lease is as valid as if all the underleases had been likewise surrendered; and the respective rights and liabilities of the new lessee and the underlessees are regulated as though the original lease had been still continued; and the landlord has the same remedy by distress or entry upon the premises in the underleases for the rents reserved by the new lease (not exceeding the rents reserved

Vict. c. 106, **8.** 9.

When reversion on a lease is surrendered or merged, the next vested estate to be deemed the

⁽v) London and Westm. Loan Co. v. Drake (1859), 6 C. B. N. S. 798. (p) Moss v. James (1878), 38 L. T. *5*95.

⁽q) Saint v. Pilley (1875), L. R. 10 Ex. 137. Cf. Re Glasdir Copper Works, [1904] 1 Ch. 819, 824.

⁽r) Clements \mathbf{v} . Matthews (1883), 11 Q. B. D. 808.

⁽s) Piggott v. Stratton (1859), 1D. F. & J. 33. See supra, p. 485, note (g).

⁽t) Dynevor **v.** Tennant (1888), 13 App. Cas. 279. See judgment of Lord Herschell, at p. 292.

⁽u) The Landlord and Tenant Act, 1730.

by the old lease) as if the old lease had been continued. The intention of the Legislature in framing this enactment was to place all parties, as to every matter, in the same position as if no surrender had taken place (v); and the new lease passes an immediate estate and not an *interesse termini* only (x).

(3) FORFEITURE.

A lease may be forfeited (i) upon the happening of an event which entitles the lessor at once to treat the lease as determined, although there is no express proviso for re-entry; or (ii) under an express proviso for re-entry attached to a breach of a stipulation in the lease.

(i) Where there is no Express Proviso for Re-entry.

Disclaimer of landlord's title.

As a general rule, any act of a lessee by which he disaffirms or impugns the title of his lessor occasions a forfeiture of his lease; for to every lease the law tacitly annexes a condition, that if the lessee do anything that may affect the interest of his lessor, the lease shall be void, and the lessor may re-enter (y). Thus a lessee may incur a forfeiture where he sues out a writ, or resorts to a remedy, which claims or supposes a right to the freehold (y), or where, in an action by his lessor grounded upon the lease, he resists the demand under the grant of a higher interest in the land (y); or where he acknowledges the fee to be in a stranger (y); or where, in fraud of the lessor, he delivers the demised premises to a stranger claiming under a hostile title, with the intent of enabling him to set up that title (z). It has, however, been held that the mere payment of rent by a tenant for a term certain to a third person (a), or a merely verbal denial by such a tenant of the landlord's title (b), will not operate as a forfeiture of the lease.

On breach of conditions annexed to grant.

Forfeitures are also incurred by the breach of express or conventionary conditions annexed by the lessor to his grant; for

(v) Doe v. Marchetti (1831), 1 B. & Ad. 715; per Lord Tenterden, C.J., at p. 721. See Cousins v. Phillips (1865), 3 H. & C. 892, 901.

(x) Ecc. Comm. v. Treemer, [1893] 1 Ch. 166.

(y) Bac. Abr. (T. 2) 884.

(z) Doe v. Flynn (1834), 1 Cr. M. & R. 137. This decision must be regarded, it is conceived, as having been

based upon the fraud of the tenant. See per Lord Denman, C.J., in Doe v. Wells (1839), 10 A. & E. 427, at p. 435, where the cases on this subject are commented upon and classified. Cf. Ackland v. Lutley (1839), 9 A. & E. 879.

(a) Doe v. Parker (1820), Gow, 180.

(b) Doe v. Wells, supra.

the lessor, having the jus disponendi, may annex whatever conditions he pleases to his grant, provided they are not illegal or repugnant to the grant itself, and upon a breach of those conditions may avoid the lease (c).

In a lease for years, no precise form of words is necessary to make a condition; it is sufficient if it appear that the words used were intended to have that effect (d); hence a clause in a lease whereby it is stipulated and conditioned that the lessee shall not assign, creates a condition for the breach of which the lessor may maintain an ejectment (e). But if the words amount only to an agreement on the part of the lessee that he will not assign, the lessor cannot determine the lease except under an express proviso for re-entry on breach of the stipulation (f). So an agreement by the lessee to give up part of the land on requisition of the lessor, without any clause of re-entry, is a contract, and not a condition (q).

A clause of forfeiture, it is said, is construed strictly (h). Construction Hence, where it applies in case no sufficient distress is found on the premises, there is no forfeiture unless every part of the premises is searched (i). And a forfeiture on assignment without licence, or on charging, is not incurred if the assignment (k)or charge (l) turns out to be void. Under a condition against assignment an equitable charge on the lease without change of possession is no forfeiture (m). But though it is a question of forfeiture, the covenant must be construed fairly; its meaning must be ascertained without regard to forfeiture: and it must be seen whether, upon that ascertained meaning, a forfeiture has been incurred (n).

Upon forfeiture of a lease the underlessee loses his estate as Effect on well as the lessee himself (o); and the underlessee of part of the

underlessees.

(c) Bac. Abr. (T. 2) 885. (d) $Dve \ \nabla$. Watt (1828), 8 B. & C. p. 315.

(e) Doe v. Watt, 8 B. & C. 308. See Simpson v. Titterell (1590), Cro. Eliz. 242; Pembroke v. Berkeley (1595), ib. 384; Harrington v. Wise (1596), ib. 486; Co. Litt. 203 b.

(f) Shaw v. Coffin (1863), 14 C.B. N. S. 372.

(g) Doe v. Phillips (1824), 2 Bing.

(h) Doe v. Powell (1826), 5 B. & C. 308, p. 313.

(i) Rees v. King (1800), Forr. 19.

(k) Doe **v**. Powell, supra.

(l) Denn v. Dolman (1794), 5 T. R. 641.

(m) Bowser \mathbf{v} . Colby (1841), 1 Hare, 109, p. 138.

(n) Corp. of Bristol v. Westcott (1879), 12 Ch. D. 461; per Cotton, L.J., at p. 467.

(o) G. W. Ry. Co. v. Smith (1876), 2 Ch. D. p. 253. But an underlessee may now generally protect himself against such loss by means of an application under sect. 4 of the Conveyancing Act, 1892; see infra, p. 505.

premises will forfeit his estate for breach of a covenant relating to the other part (p).

Enforcing forfeiture.

After a grant of the reversion neither the lessor nor the assignee can take advantage of a forfeiture incurred before the grant (q); nor can the lessor enforce the forfeiture against a purchaser of the lease whom he has advised, after the cause of forfeiture, to purchase; unless under special circumstances, as where the purchaser was already interested in the lesse as incumbrancer, and the lessor's advice was simply that he should "take to" the premises (r).

(ii) Where there is an Express Proviso for Re-entry.

By whom lease may be determined under proviso for re-entry.

The construction of a proviso for re-entry by the lessor on non-performance by the lessee of the covenants of the lease, and that upon such non-performance the term shall cease and become void, is that the lease shall be voidable (s), and voidable only at the option of the lessor; for the lessee who has been guilty of a wrongful act cannot avail himself of the wrongful act to insist that thereby the lease has become void to all intents and purposes (t), and the tenancy will therefore continue until some act is done by the lessor showing his intention to determine (u). And it is the same where the condition is incorporated in favour of the Crown by statute (x).

Forfeiture under proviso.

A proviso for re-entry in case of breach or non-performance of covenants or stipulations applies to a provision against assignment though not strictly in the form of a covenant (y). Where the lessor is entitled to re-enter "as if the indenture had never been made," he is not debarred from suing on the covenant for rent accrued before the forfeiture (z). It has been doubted

- (p) Darlington v. Hamilton (1854), Kay, 550; Creswell v. Davidson (1887), 56 L. T. 811.
- (q) Fenn v. Smart (1810), 12 East, 444.
- (r) Doe v. Eykins (1824), 1 C. & P. 154.
- (s) Bowser v. Colby (1841), 1 Hare, 109.
- (t) Judgment of Bayley, J., in Doe v. Bancks (1821), 4 B. & A. p. 406; Reid v. Parsons (1817), 2 Chit. 247; Rede v. Farr (1817), 6 M. & S. 121; Arnsby v. Woodward (1827), 6 B. & C. 519; Dakin v. Cope (1827), 2 Russ. 170; Doe v. Birch (1836), 1 M. & W. 402; Jones v. Carter (1846), 15 M. &
- W. p. 725; Toleman v. Portbury (1871), L. R. 6 Q. B. p. 250; Re Tickle (1886), 3 Morr. 126. Formerly a condition that the lease should be void was construed literally: Pennant's Case (1596), 3 Rep. 64 b. See 1 Sm. I. C. 11th ed. 42.
- (u) See judgment of Denman, C.J., in Roberts v. Davey (1833), 4 B. & Ad. p. 671.
- (x) Davenport v. Reg. (1877), 3 App. Cas. 115.
- (y) Brooks v. Drysdale (1877), 3 C. P. D. 52.
- (z) Hartshorne v. Watson (1838), 4 Bing. N. C. 178. Cf. Blore v. Giulini, [1903] 1 K. B. 356.

whether non-insurance is a cause of forfeiture if under the lease the lessor is entitled to insure upon default, and to distrain for the premium (a).

It is for the lessor to prove that the forfeiture has been Proof of incurred. Hence, in forfeiture for breach of a covenant to forfeiture. insure, the omission to insure must be proved by the plaintiff. It is not sufficient that the lessee fails to produce the policy (b). The Court will not grant discovery of documents or give leave to administer interrogatories for the purpose of establishing a forfeiture (c).

A proviso for re-entry can operate only during the existence Forfeiture of the term; hence it cannot be exercised so as to deprive a during hold-ing over. tenant, who is holding over, of his right to emblements (d). But if the tenant by paying rent while he is holding over becomes a yearly tenant, the proviso for re-entry on non-payment of rent attaches to this yearly tenancy (e). A proviso for re-entry on breach of covenant contained in an agreement for lease was formerly held to apply to the yearly tenancy created by possession and payment of rent under the agreement (f); and such a proviso is now, it is conceived, enforceable in the case of an agreement for a lease to which the doctrine of Walsh v. Lonsdale (g) applies.

Before advantage can be taken of a proviso for re-entry for Demand of non-payment of rent, a formal demand of rent must be made (h); unless such demand has been either expressly dispensed with in the proviso or condition (i), or one half-year's rent is in arrear and no sufficient distress can be found on the premises (k). The demand must be of the sum due for rent for the last term of payment (l), and must be made at a convenient time before sunset

⁽a) Doe v. Sutton (1841), 9 C. & P. 706.

⁽b) Doe v. Whitehead (1838), 8 A. & E. 571. See Doe v. Robson (1826), 2 C. & P. 245.

⁽c) E. of Mexborough ∇ . Whitwood Urban District Council, [1897] 2 Q. B. 111; overruling Seaward v. Dennington (1896), 44 W. R. 696.

⁽d) Johns v. Whitley (1770), 3 Wils. 127, p. 140.

⁽e) Thomas v. Packer (1857), 1 H. & N. 669.

⁽f) Doe v. Amey (1840), 12 A. & E. 476; Doe v. Breach (1806), 6 Esp. 106.

⁽g) (1882), 21 Ch. D. 9; supra, p. 81. (h) Doe v. Robson (1826), 2 C. & P. 245; Hill v. Kempshall (1849), 7 C.B. 975. See Jackson v. Northampton Tramways Co. (1886), 55 L. T. 91.

⁽i) Doe v. Masters (1824), 2 B. & C. **490.**

⁽k) 15 & 16 Vict. c. 76, s. 210, quoted infra, p. 498. See Doe v. Wandlass (1797), 7 T. R. 117.

⁽l) See Doe v. Paul (1829), 3 C. & P. 613; Fabian v. Winston (1590), Cro. Eliz. 209; Scot v. Scot (1587), Cro. Eliz. 73.

on the last day of payment (m), and continued till sunset (n). The demand must be made upon the land: if there is a house on the premises, at the front door of such house (o); or if the premises consist of lands and woods upon the lands (p); or if they consist of woods only, at the gate of the wood, or at some highway leading through it, or other most notorious place (q). It is not material whether the tenant is there or not (o). The demand may, in the absence of the lessee, be made upon an undertenant or other stranger to the lessor (r). If tender of the rent is made to him who is to receive it upon any part of the land, at any time on the last day of payment, the tender will save the condition (q).

Under certain circumstances the demand of the rent may be dispensed with, the 210th section of the Common Law Procedure Act, 1852, providing as follows:—

"In all cases between landlord and tenant, as often as it shall happen that one half-year's rent shall be in arrear (s), and the landlord or lessor, to whom the same is due, hath right by law to re-enter for the non-payment thereof (t), such landlord or lessor shall and may, without any formal demand or re-entry, serve a writ in ejectment for the recovery of the demised premises, . . . which service in ejectment shall stand in the place and stead of a demand and re-entry; and in case of judgment against the defendant for non-appearance, if it shall be made appear to the Court where the said action is depending, by affidavit (u), or be proved upon the trial in case the defendant appears, that half-a-year's rent was due before the said writ was served, and that no sufficient distress was to be found (x) on the demised premises countervailing the arrears then due, and that the lessor had power to re-enter, then and in every such case

18 & 16 Vict. c. 76, s. 210. Where one half-year's rent is in arrear and landlord has right to reenter, he may, instead of formal demand, serve writ in ejectment.

- (m) Co. Litt. 202 a; Doe v. Paul, supra. See Acocks v. Phillips (1860), 5 H. & N. 183.
- (n) See Wood and Chivers' Case (1573). 4 Leon. 179.
 - (o) Co. Litt. 201 b.
 - (p) Poph. 58.
 - (q) Co. Litt. 202 a.
- (r) See Doe v. Brydges (1822), 2 D. & Ry. 29.
- (s) There is not a half-year's rent in arrear if, though originally the arrears were greater than this, they have been made less by distraint: Cotesworth v. Spokes (1861), 10 C. B.

- N. S. 103.
- (t) The time prescribed before reentry must have elapsed: Doe v. Roe (1849), 7 C. B. 134.
- (u) See Cross v. Jordan (1852), 8 Ex. 149.
- (x) Doe v. Franks (1847), 2 C. & K. 678. If the tenant has locked up the demised premises, it may be held proved that no sufficient distress is "to be found" there. See Hammond v. Mather (1862), 3 F. & F. 151; Doe v. Dyson (1827), M. & M. 77; Doe v. Roe (1847), 5 D. & L. 272.

the lessor shall recover judgment and execution, in the same manner as if the rent in arrear had been legally demanded, and a re-entry made."

The above enactment, in the cases to which it applies, dis- Re-entry. penses both with demand and also with re-entry. The question whether, in general, re-entry was necessary before bringing ejectment on a forfeiture for breach of covenant was avoided under the old practice by the circumstance that the defendant, the lessee, by entering into the consent rule, confessed the lessor's entry. Consequently an actual re-entry was not necessary (y). Under the present practice the supposed re-entry does not take place, but the right of the lessor is not thereby affected, and he can still bring an action to recover possession without previously entering on the land (z). For the purpose of taking advantage of the forfeiture, bringing the action is equivalent to actual entry (a). The commencement of proceedings, consequently, is a final election by the lessor to determine the term, and, even though no judgment is obtained, he cannot afterwards treat the tenancy as subsisting, so as to sue for rent due, or covenants broken, subsequently to such commencement (b). There is a final determination of a tenancy under a lease when the lessor by some final and positive act which cannot be retracted—for instance, by issue of a writ for recovery of possession and service of it upon the tenant in occupation treats a breach of covenant by the lessee as constituting a forfeiture (c). A reletting of the premises by the lessor to an undertenant of the lessee is a sufficient re-entry to avoid the lease (d).

Where a lease to a company contains a power of re-entry upon Entry upon the company being wound up, the landlord's right to re-enter winding-up. accrues on the making of a winding-up order, and is not deferred until the conclusion of the winding-up (e).

(iii) Waiver of Forfeiture.

A forfeiture is waived if the lessor elects not to take advantage of it, and shows his election either expressly, by a statement to

(y) Goodright v. Cator (1780), 2 Dougl. 477.

(z) Ware v. Booth (1894), 10 T. L.R. 446. The question was left undecided in Ex parte Dyke (1882), 22 Ch. D.

(a) Grimwood v. Moss (1872), L. R. 7 C. P. 360, per Willes, J., at p. 364.

(h) Jones v. Carter (1846), 15

M. & W. 718.

(c) Serjeant v. Nash, Field & Co., C. A., [1903] 2 K. B. 304, at pp. 310, 313, approving Grimwood v. Moss, supra.

(d) Baylis v. Le Gros (1858), 4

C. B. N. S. 537.

(e) General Share, &c., Co. v. Wetley Brick Co. (1882), 20 Ch. D. 260.

that effect to the lessee, or impliedly, by acknowledging the continuance of the tenancy (f). And if the lessor, after a cause of forfeiture has come to his knowledge, does anything whereby he recognizes the relation of landlord and tenant as still subsisting, he is precluded from saying that he did not do the act with the intention of waiving the forfeiture (q). Direct notice of the cause of forfeiture to the lessor is perhaps not necessary if such cause is equally within the cognizance of himself and the lessee (h), but in general both knowledge on the part of the lessor (i), and a positive act affirming the tenancy (k), are necessary to constitute a waiver. Mere acquiescence, as by standing by and seeing the lessee making alterations which are in breach of covenant (l), is not sufficient (m).

Acts amounting to waiver.

A tenancy is affirmed, and—assuming knowledge on the part of the lessor—the forfeiture is waived, under the following circumstances:—

1. Receipt of rent.

(1) Acceptance by the landlord from the tenant of rent which has accrued due since the cause of forfeiture (n). applies to a Crown lease (o), and to receipt of rent from an undertenant (p), or from any other person, in satisfaction of rent (q). Payment into the lessor's banking account has been held to be a waiver, where such payment was usual, although the lessor had instructed the bank not to receive it, no step having been taken to inform the lessee or to return the rent (r). And the acceptance of subsequent rent bars a forfeiture for condition broken, as well as a forfeiture depending upon an

(f) Ward v. Day (1864), 5 B. & S. p. 362. See Ex parte Newitt (1881), 16 Ch. D. 522.

(g) Toleman v. Portbury (1871), L. R. 6 Q. B. 245, p. 248. And see this case as to setting up two inconsistent grounds of forfeiture.

(h) Harvey v. Oswald (1597), Cro. Eliz. 553, 572.

(i) Pennant's Case (1596), 3 Rep. 64 a; Roe v. Harrison (1788), 2 T. R.

(k) Green's Case (1582), Cro. Eliz. 3. (1) Perry ∇ . Davis (1858), C. B. N. S. 769.

(m) Per Heath, J., in Doe v. Allen

(1810), 3 Taunt. p. 81.

(n) Goodright ∇ . Davids (1778), Cowp. 803; Pennant's Case (1596), 3 Rep. 64 b, note (B); Arnsby v. Woodward (1827), 6 B. & C. 519; Doe v. Rees (1838), 4 Bing. N. C. 384; Doe v. Pritchard (1833), 5 B. & Ad. 765; Miles v. Tobin (1868), 17 L. T. 432; Pellatt v. Boosey (1862), 31 L. J. C. P. 281. See Whitchcot v. Fox (1617), Cro. Jac. 398. As to the distinction in Pennant's Case (1596), 3 Rep. 64 b. between leases which are void and those which are voidable on breach of condition, see 1 Sm. L. C. 11th ed. 42; supra, p. 496.

(o) Bridges v. Longman (1857), 24 Beav. 27.

(p) Price v. Worwood (1859), 4 H. & N. 512.

(q) Pellatt ∇ . Boosey, supra. (r) Pierson v. Harvey (1885), 1 T. L. R. 430.

express power of re-entry (s). The landlord cannot prevent the waiver by accepting the rent conditionally and without prejudice to his right to insist on the forfeiture (t).

But a forfeiture is not waived by the acceptance by the landlord of rent due before the forfeiture was incurred (u).

- (2) An absolute and unqualified demand of rent due after 2. Demand the forfeiture, made by a person having sufficient authority (x).
 - of rent.
- (3) Bringing an action for rent accruing due subsequently 3. Action. to the forfeiture (y), or taking other proceedings, such as a claim to an injunction (z), based upon the continuance of the tenancy (a). Hence, where a writ claims possession for the forfeiture and also arrears of rent accruing due subsequently to the forfeiture, the latter claim operates as a waiver of the forfeiture (b); though if the breach is a continuing one—as in the case of non-repair—the lessor may still be entitled to forfeit in respect of the breaches subsequent to the date up to which rent has been claimed (c).
- (4) Distress for rent, whether due before or after the cause 4. Distress. of forfeiture (d).

The Landlord and Tenant Act, 1709, ss. 6, 7 (e), which allows distress within six months after the determination of the tenancy, does not apply where the tenancy is determined by forfeiture (f); and, apart from the statute, a distress can only be made during the existence of the tenancy. Hence the distress recognizes the tenancy and operates as a waiver, unless it is capable of some other explanation, as where it is levied as a preliminary to showing insufficiency of distress and so gaining a title to sue in ejectment under sect. 210 of the Common Law Procedure Act, .

- (s) Marsh v. Curteys (1598), Cro. Eliz. 528.
- (t) Davenport v. Reg. (1877), 3 App. Cas. 115; Croft ∇ . Lumley (1855), 5 E. & B. 648, see 6 H. L. C. 672, p. 744; Griffin v. Tomkins (1880), 42 L. T. 359; Strong v. Stringer (1889), 61 L. T. 470.
- (u) Green's Case (1582), Cro. Eliz. 3. See Price v. Worwood (1859), 4 H. & N. 512.
- (x) Per Parke, B., in Doe v. Birch (1836), 1 M. & W. p. 408.
- (y) Roe v. Minshall (1760), Bull. N. P. 96; Dendy v. Nicholl (1858), 4 C. B. N. S. 376.
- (z) Evans v. Davis (1878), 10 Ch. D. 747.

- (a) Pellatt ∇ . Boosey (1862), 31 L. J. C. P. 281.
- (b) Bevan v. Barnett (1897), 13 T. L. R. 310.
- (c) Penton v. Barnett (1898), 1 Q. B. See Re Serle [1898], 1 Ch. **276.** 652.
- (d) Pennant's Case (1596), 3 Rep. ·64 b; Doe v. Peck (1830), 1 B. & Ad. 428; Doe v. Williams (1835), 7 C. & P. 322 (as to waiver of disclaimer).
- (e) 8 Anne, c. 14, supra, p. 276. (f) Grimwood v. Moss (1872), L. R. 7 C. P. p. 365; Kirkland v. Briancourt (1890), 6 T. L. R. 441. See Ward v. Day (1864), 5 B. & S. 359.

1852 (g). And the mere continuing in possession of distress taken before the forfeiture is not a waiver (h).

But if the lessor has already commenced proceedings in ejectment, since this is a final determination to insist on the forfeiture (i), neither distress (k) nor the receipt of rent due subsequently to the forfeiture (l) operates as a waiver; though such receipt of rent may be evidence of a new tenancy from year to year on the old terms (m).

5 Recital.

lease after expiration of

forfeited

7. Notice to

lease.

repair.

6. Agreement to grant new

- (5) A recital of the existence of the tenancy in an instrument subsequent to the forfeiture (n).
- (6) An agreement by the landlord to grant a new term after the expiration by effluxion of time of a term in respect of which a forfeiture has been incurred (o).
- (7) Where there is a general covenant to repair, and also a covenant to repair after notice, a notice to repair within a specified period, as three months, is a waiver of the general covenant (p), and there is no forfeiture till the period has elapsed. Consequently there is no waiver of the forfeiture for breach of the special covenant by receipt, after the period of the notice, of rent due while the notice was running (q). But where the notice is to repair "forthwith" (r), or, "in accordance with the covenants of the lease" (s), the general covenant is not waived, and the lessor can enter at once for non-repair.

Continuing breach.

Where the breach of covenant causing a forfeiture is continuous (t), the receipt of rent, or other acknowledgment of tenancy by the landlord, will not preclude him from taking advantage of a forfeiture incurred subsequently to such acknowledgment (u).

(y) 15 & 16 Vict. c. 76; Thomas v. Lulham, [1895] 2 Q. B. 400; Brewer v. Eaton (1783), 3 Dougl. 230 (on the previous provisions of 4 Geo. 2, c. 28).

(h) Doe v. Johnson (1816), 1 Stark. 411.

(i) Supra, p. 502.

- (k) Grimwood v. Moss (1872), L. R. 7 C. P. 360.
- (l) Doe v. Meux (1824), 1 C. & P. 346.
- (m) Evans v. Wyatt (1880), 43 L. T. 176.
- (n) Green's Case (1582), Cro. Eliz. 3.
 - (o) Ward v. Day (1864), 5 B. & S.

- 359. See *Doe* v. *Curwood* (1835), 1 Har. & W. 140.
- (p) Doe v. Meux (1825), 4 B. & C. 606. See also Doe v. Lewis (1836), 5 A. & E. 277, cited supra, p. 342.
- (q) Cronin v. Rogers (1884), C. & E. 348.
- (r) Roe v. Paine (1810), 2 Camp. 520.
- (s) Few v. Perkins (1867), L. R. 2 Ex. 92. See Cove v. Smith (1886), 2 T. L. B. 778,
 - (t) Supra, pp. 338, 381.
- (u) Doe v. Woodbridge (1829), 9 B. & C. 376; Doe v. Jones (1850), 5 Ex. 498.

A covenant to repair admits of continuing breach (x), and if the neglect continues from day to day, distress is no waiver of the forfeiture in respect of the subsequent breach (y). A covenant to insure is a continuing covenant, and a waiver extends only to past breaches (z). Where there is a covenant against assigning or demising the premises, or permitting any other person than the lessee to occupy them, and the lessee underlets, it has been held that permitting the underlessee to remain is not a continuing breach, and a distress with knowledge of the underletting is a waiver (a); but where the covenant is against using the premises otherwise than in a particular way, a use by an underlessee in any other than such particular way may be a continuing breach on the part of the lessee (b). The lessor cannot insist on forfeiture for a continuing breach where he has received rent and required repairs to be done (c).

According to the doctrine of Dumpor's Case (d), a condition Effect of was not apportionable, and a waiver of a breach, like a licence to do an act otherwise prohibited, dispensed with the condition alto- breach to gether, and not merely in respect of the particular breach; but this effect of waiver has been removed by the Law of Property Amendment Act, 1860, the sixth section of which is as follows:—

restricted to which it specially relates.

"Where any actual waiver of the benefit of any covenant or 23 & 24 Vict. condition in any lease on the part of any lessor, or his heirs, executors, administrators or assigns shall be proved to have taken place, after the passing of this Act, in any one particular instance, such actual waiver shall not be assumed or deemed to extend to any instance, or any breach or covenant or condition, other than that to which such waiver shall specially relate, or to be a general waiver of the benefit of any such covenant or condition, unless an intention to that effect shall appear."

(iv) Relief against Forfeiture.

Relief against forfeiture can be granted under sect. 14 of the Conveyancing Act of 1881 (e), as amended by the Conveyancing

```
(x) Coward \nabla. Gregory (1866),
L. R. 2 C. P. 153. See Fryett v.
Jeffreys (1796), 1 Esp. 393.
```

(y) Doe ∇ . Durnford (1832), 2 Cr. & J. 667.

(z) Doe v. Gladwin (1845), 6 Q. B. 953.

(a) Walrond v. Hawkins (1875), L. R. 10 C. P. 342.

(b) See judgment of Bramwell, L.J., in Lawrie v. Lees (1880), 14 Ch. D. 249. Cf. 7 App. Cas. p. 30.

(c) Griffin v. Tomkins (1880), 42 L. T. 359.

(d) (1603), 4 Rep. 119; 1 Sm. L. C. 11th ed. 32.

(e) 44 & 45 Vict. c. 41.

Act of 1892(f), except to lessees for non-payment of rent, and in certain cases specially excluded from the operation of The relief of lessees against forfeiture for nonthe section. payment of rent is provided for by statutes which were already in force in 1881; and, under the Conveyancing Act of 1892, an underlessee may be relieved against forfeiture of the headlease for non-payment of rent. Relief in the above excluded cases can be given only under special circumstances recognized as justifying the intervention of equity. The right to relief is a chose in action which, in the event of the bankruptcy of the lessee, vests in his trustee, and the trustee is entitled to sell such right and to assign it to the purchaser (g).

(a) RELIEF UNDER THE CONVEYANCING ACTS.

Conveyancing Act, 1881, s. 14, sub-s.(1). No forfeiture till after notice to repair breach.

By the first and second sub-sections of sect. 14 of the Conveyancing Act, 1881, it is enacted as follows:—

"(1) A right of re-entry or forfeiture under any proviso or stipulation in a lease (h), for a breach of any covenant or condition in the lease, shall not be enforceable by action or otherwise, unless and until the lessor (i) serves on the lessee a notice specifying the particular breach complained of, and, if the breach is capable of remedy, requiring the lessee to remedy the breach (j), and, in any case, requiring the lessee to make compensation in money for the breach, and the lessee fails within a reasonable (k) time thereafter to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money to the satisfaction of the lessor for the breach.

Sub-sect. (2). forfeiture.

"(2) Where a lessor is proceeding, by action or otherwise, to Relief against enforce such a right of re-entry or forfeiture, the lessee may, in the lessor's action, if any, or in any action brought by himself,

(f) 55 & 56 Vict. c. 13.

(g) Howard v. Fanshawe, [1895] 2 Ch. 581, 589.

(h) "Lease" includes an original or derivative underlease, and "lessee" has a correspondingly extended meaning (sub-sect. (3)). See, too, sect. 5 of the Act of 1892, as to "lease," "underlessee," and "underlessee."

(i) For the purposes of this 14th section "a lessor includes an original or derivative underlessor, and the heirs, executors, administrators, and assigns of a lessor" (sub-sect. (3)).

But the "assigns" so included are legal assigns, and the person who owns an equity of redemption does not come within that description: Matthews v. Usher, [1900] 2 Q. B. 535, at p. 537.

(j) A notice requiring the lessee to repair "within one month or a reasonable time thereafter," when the lease allows three months, is good within this provision: Re Serle, [1898] 1 Ch. 652.

(k) See Horsey Estate, Lim. V. Steiger, [1899] 2 Q. B. 79.

apply (1) to the Court for relief; and the Court may grant or refuse (m) relief, as the Court, having regard to the proceedings and conduct of the parties under the foregoing provisions of this section, and to all the other circumstances, thinks fit; and in case of relief may grant it on such terms (n), if any, as to costs, expenses, damages, compensation, penalty, or otherwise, including the granting of an injunction to restrain any like breach in the future, as the Court, in the circumstances of each case, thinks fit."

The last-mentioned sub-sect. (2) did not enable an underlessee to obtain relief against a forfeiture of the headlesse for breach of a covenant combined in it; but this defect was remedied by the Conveyancing Act, 1892, s. 4, which is as Conveyancfollows:--

ing Act, 1892 (55 & 56 Vict.

"Where a lessor is proceeding by action or otherwise to c. 13), s. 4. enforce a right of re-entry or forfeiture under any (o) covenant, proviso, or stipulation in a lease, the Court may, on application by any person claiming as underlessee any estate or interest in the property comprised in the lease or any part thereof either in the lessor's action (if any) or in any action brought by such person for that purpose, make an order vesting for the whole term of the lease or any less term the property comprised in the lease, or any part thereof, in any person entitled as underlessee to any estate or interest in such property upon such conditions as to execution of any deed or other document, payment of rent, costs, expenses, damages, compensation, giving security, or otherwise as the Court in the circumstances of each case shall think fit, but in no case shall any such underlessee be entitled to require a lease to be granted to him for any longer term than he had under his original sublease."

This section gives to the Court the most ample discretion to say upon what conditions and terms the property comprised in the headlesse shall be vested in the underlessee—a discretion absolutely unfettered by any limitation except that contained in

Court's discretion to relieve underlessees.

- (l) As to mode of applying, see Ruttledge v. Whelan (1882), 10 L. R. Ir. 263.
- (m) E.g., Batson v. London School Board (1903), 20 T. L. R. 22, where landlords were held entitled to recover possession, notwithstanding a claim of title set up by the Board.
 - (n) As to compelling a tenant who
- has executed the repairs to come in and have the terms of relief settled, see West v. Rogers (1888), 4 T. L. R. **229.**
- (o) The section accordingly applies to a forfeiture of a headlease for non-payment of rent: Gray v. Bonsall, C. A., [1904] 1 K. B. 601.

the words at the end of the section. The "circumstances of each case" involve the terms of the headlease, the terms of the underlease, the circumstances of the forfeiture, what has been caused by the forfeiture, and the position of the parties generally. But it must not be forgotten that, when the underlessee comes to the Court for assistance, he does so on the footing that the original lessee's rights are gone in favour of the original lessor, who, by virtue of the forfeiture which he has enforced against the original lessee, is for the purposes of this section entitled to be treated as having vested in him all the rights of that lessee (p).

The Court's discretion under this sect. 4 may be exercised, in favour of an underlessee, even in cases where relief could not have been granted to the original lessee; as, for instance, in the case of a forfeiture for breach of a covenant not to assign without licence; but in such cases the jurisdiction will be exercised with caution and sparingly (q). An application under the section by an underlessee may be made by defence and counterclaim in the lessor's action for recovery of possession (r).

Sub-sect. (9).

Sect. 14 of the Act of 1881 applies (sub-sect. (9)) to leases made either before or after the commencement of the Act, and has effect notwithstanding any stipulation to the contrary.

Notice to repair breach.

The statutory notice is necessary as a preliminary to the lessor's obtaining possession either by means of an action, or by peaceable entry without action. Accordingly, where a lesse contained a proviso for re-entry on the bankruptcy of the lessee, and, the lessee having been adjudicated bankrupt, the lessor purported to re-enter under the proviso without giving a statutory notice, it was held that the re-entry was void as against the lessee's trustee in bankruptcy (s).

It was held by Kay, J., that even though notice had not been served under sub-sect. (1) of sect. 14, sub-sect. (2) left it

(q) Imray v. Oakshette, C. A., [1897] 2 Q. B. 218, 225, 227; High-gate School v. Sewell, [1894] 2 Q. B. 906 (bankruptcy of lessee).

(r) Highgate School v. Sewell, [1893] 2 Q. B. 254; Keith v. R. Gancia & Co., C. A. [1904], 1 Ch. 774; London Bridge Buildings Co. v. Thomson (1903), 89 L. T. 50.

(s) Re Riggs, Ex parte Lovell, [1901] 2 K. B. 16.

⁽p) Ewart v. Fryer, [1901] 1 Ch. at pp. 513, 515, 516. In this case it was held that the Court, in fixing the terms of a new lease to be granted to an underlessee, could alter the amount of the rent from that reserved by the underlease; and such an alteration was made, after an inquiry, the costs of which, and also of the new lease, were ordered to be paid by the underlessee: S. C. (1902), 86 L. T. 676; 18 T. L. R. 590.

discretionary with the Court to refuse relief (t); but the correct view appears to be that the serving of the notice is a necessary preliminary to insisting on the forfeiture (u). It is not necessary that the notice should require payment of compensation in money (x). It is sufficient if it is addressed to the lessee by that designation without his name, or generally to the persons interested, without any name (y). But where a lessee has executed a declaration of trust of his leasehold property in favour of a trustee for the benefit of his creditors, the lessee is still a person interested, and service of the notice on the trustee alone will not be sufficient (z). If the lease has been assigned, a notice addressed to the original lessee and "all others whom it may concern," and served on the person in occupation, is sufficiently addressed to, and validly served on, the assignee (a). The notice must be such as will enable the tenant to understand with reasonable certainty what it is which he is required to do. It must be so distinct as to direct his attention to the particular things of which the landlord complains, so that the tenant may have an opportunity of considering his position, and deciding what to do, before an action is brought to enforce the forfeiture (b). A notice by the lessor to the lessee, "You have broken the covenants for repairing the inside and outside of the houses," specifying the premises, but not giving any details of the want of repair, is insufficient (b). So was a notice which referred only to a breach of covenant as to which there had been a waiver, and omitted to mention another covenant, as to which there was a continuing breach (c).

(t) Scott v. Matthew Brown & Co. (1885), 51 L. T. 746.

(u) Greenfield v. Hanson (1886), 2 T. L. R. 876. See, too, Jacques v. Harrison (1884), 12 Q. B. D. p. 167.

(x) Lock v. Pearce, [1893] 2 Ch. 271; disapproving N. London Free-hold Land Co. v. Jacques (1884), 49 L. T. 659, which had been followed in Greenfield v. Hanson (1886), 2 T. L. R. 876.

(y) Conv. Act, 1881, s. 67, subsect. (2).

(z) Gentle v. Faulkner, [1900] 2 Q. B. 267, at pp. 276, 278.

(a) Cronin v. Rogers (1884), C. & E. 348.

(b) Horsey Estate, Ltd. v. Steiger, [1899] 2 Q. B. 79, at p. 91; Fletcher v. Nokes, [1897] 1 Ch. 271. See, too,

Brown & Co. Re Serle, [1898] 1 Ch. 652. The notice may be as follows:—
nson (1886), 2 To Mr. C. D.

I hereby give you notice that you have broken the covenant contained in your lease dated the —— day of ——, 19—, of [describe premises] for painting the outside of the said premises at the end of the third year of your tenancy, and I require you to paint the outside of the said premises in accordance with the said covenant and to pay me £—— by way of compensation for the said breach.

Dated this —— day of ——, 19—. E. F.

But usually the details will be numerous, and there will be a schedule of dilapidations.

(c) $Jacob \ \nabla$. Down, [1900] 2 Ch. 156.

But if a lessor gives a notice specifying (say) three things as breaches, and it turns out that two of them are breaches and the third is not, the notice is not necessarily bad as a whole. Such a notice contains too much; but it may, nevertheless, be a good notice within the Act, as regards the actual breaches specified in it (d).

Relief.

A lessee who desires to obtain relief must apply before the lessor has actually re-entered (e), and, if no action is pending by the lessor, he must commence proceedings by writ. He cannot apply by originating summons (f). But relief can be granted in appropriate proceedings although not claimed by the pleadings (g), and relief has been granted against breach of a covenant to repair, although the premises were in a very dilapidated condition (g). It was held, shortly after the passing of the Act, that it applied to proceedings pending at the passing of the Act in respect of breaches previously committed (h).

Compensation. The lessee will be required to make compensation only where there is some damage to be made good, and the compensation is measured by the same rule as damages in an action for the breach of covenant (i). It was held that, under the Act of 1881, the demand for compensation in the notice before forfeiture could not include the costs incurred by the lessor in consulting and employing a solicitor and surveyor in respect of the preparation of the notice under sub-sect. (1)(i); but such expenses are now recoverable under the Conveyancing Act, 1892 (k), though not by the lessor against an underlessee (l), or against a lessee who complies with a notice under sect. 14 (1), and so saves the forfeiture (l).

Conveyancing Act, 1892, s. 5.
Agreements for leases.

In sect. 14 of the Conveyancing Act, 1881, as amended by the Act of 1892, and in the Act of 1892, "lease" includes an agreement for a lease where the lessee has become entitled to have his lease granted (m); and "underlease" includes an agreement

(d) Pannell v. City of London Brewery Co., [1900] 1 Ch. 496, 500.

(e) Rogers v. Rice, [1892] 2 Ch. 170.

- (f) Lock v. Pearce, [1893] 2 Ch. 271.
- (g) Mitchison v. Thomson (1883), C. & E. 72.
- (h) Quilter v. Mapleson (1882), 9 Q. B. D. 672.
- (i) Skinners' Co. v. Knight, [1891] 2 Q. B. 542. But the restriction does not apply where the Court is settling

terms of relief under sub-sect. (2), and payment may be required of the lessor's costs as between solicitor and client, as well as the cost of survey and schedules of dilapidations: Bridge v. Quick (1892), 61 L. J. Q. B. 375; Bond v. Freke (1884), W. N. p. 47.

(k) 55 & 56 Vict. c. 13.

(l) Nind v. Nineteenth Century Building Society, [1894] 2 Q. B. 226.

(m) See Swain v. Ayres (1888), 21 Q. B. D. 289; Strong v. Stringer (1889), 61 L. T. 470. for an underlease where the underlessee has become entitled to have his underlease granted. But a lessee who has entered under an agreement for a lease, and has committed breaches of covenants contained in the agreement which were to be inserted in the lease, is not entitled to have his lease granted—that is, to specific performance of the agreement—and cannot obtain relief under sect. 14 (n).

Sect. 14 of the Act of 1881 does not extend (sub-sect. (6)) to "a covenant or condition against the assigning, underletting, parting with the possession, or disposing of the land leased (o); or to a condition for forfeiture on the bankruptcy of the lessee (p), cluded from or on the taking in execution of the lessee's interest"; or to relief. certain covenants or conditions in mining leases (q). And it has been settled by a decision of the House of Lords (r), that a proviso for re-entry "if and whenever the lessees, being a company, shall enter into liquidation whether compulsory or voluntary," is a "condition for forfeiture on the bankruptcy of the lessee" within the meaning of the last-mentioned sub-section.

But a condition against execution by the lessee of an assignment for the benefit of his creditors is not a condition against "disposing of the land leased," those words in the sub-section applying only to a covenant or condition which upon its face is an absolute covenant or condition against such disposal (s).

By sect. 2 (2) of the Conveyancing Act, 1892, the exclusion of forfeiture on bankruptcy or execution from the relief afforded by sect. 14 (1) of the Act of 1881 was modified in favour of creditors, and on their behalf relief can be obtained within a year from the date of the bankruptcy (t). This modification does not apply, however, to leases of (a) agricultural or pastoral land; (b) mines or minerals; (c) public-houses (u); (d) furnished houses; or (e) any property with respect to which the personal

Conveyancing Act, 1881, s. 14, sub-s. (6).

⁽n) Coatsworth v. Johnson (1886), **55** L. J. Q. B. 220.

⁽o) But there is no such restriction in sect. 4 of the Act of 1892, and an underlessee may, but only in an exceptional case, be relieved under that section against forfeiture of the original lease for breach of a covenant against assigning or underletting. See Imray v. Oakshette, [1897] 2 Q. B. 218, 227; Highgate School v. Sewell, [1894] 2 Q. B. 906 (bankruptcy of lessee).

⁽p) See Ex parte Gould (1884), 13 Q. B. D. 454.

⁽q) As to these covenants or conditions, see supra, p. 212.

⁽r) Fryer v. Ewart, [1902] A. C. 187, affirming Ewart v. Fryer, [1901] 1 Ch. 499.

⁽s) Gentle v. Faulkner, [1900] 2 Q. B. 267, at p. 275.

⁽t) See Re Riggs, Ex parte Lovell, [1901] 2 K. B. at p. 20.

⁽u) See Fryer v. Ewart, [1902] A. C. at p. 196.

qualifications of the tenant are of importance for the preservation of the property, or on the ground of neighbourhood to the lessor or his tenants.

(b) RELIEF IN RESPECT OF NON-PAYMENT OF RENT.

Sect. 14 of the Conveyancing Act, 1881, does not affect the law relating to re-entry or forfeiture or relief in case of non-payment of rent (x). In such cases equity formerly granted relief on payment of the rent with full costs (y), but it is now provided by statute that this can only be done within six months after execution executed (z), and the mode of granting relief is regulated by statute, and a similar jurisdiction was conferred upon the courts of common law (a). The jurisdiction is now exercisable by the High Court (b). Relief is granted only upon payment to the landlord or into Court of the rent and costs (c).

(c) RELIEF IN OTHER CASES.

For breaches of covenants other than for payment of a sum of money, courts of equity gave relief only upon the grounds of fraud, accident, surprise or mistake (d). In the absence of such special circumstances there was, for instance, no jurisdiction to grant relief in respect of a breach of a covenant not to assign or underlet without consent (e), not to permit a way over the

(x) Sub-sect. (8).

(y) See cases referred to in Howard v. Fanshawe, [1895] 2 Ch. pp. 586, 587. But relief ought not to be granted unless the landlord and other parties interested can be put in the same position as before; Stanhope v. Haworth (1886), 3 T. L. R. 34.

(z) Common Law Procedure Act, 1852 (15 & 16 Vict. c. 76), s. 210. See Bowser v. Colby (1841), 1 Hare, p. 125, on the earlier provision to the same effect in 4 Geo. 2, c. 28. Relief can also be granted where the lessor has resumed possession without the assistance of the Court; but in such a case it seems that the lessee would be limited, on the analogy of the statute, to six months from the reentry: Howard v. Fanshawe, [1895] 2 Ch. 581, 589.

(a) 23 & 24 Vict. c. 126, s. 1.

(b) See Wilson v. Bolton (1893), 10 T. L. R. 17. As to relief to an under-

lessee, see *Doe* v. *Byron* (1845), 1 C. B. 623, and *supra*, p. 505, note (0); and as to relief in favour of a mortgagee by subdemise, see *Newbolt* v. *Bingham* (1895), 72 L. T. 852; *Hare* v. *Elms*, [1893] 1 Q. B. 604.

(c) See C. L. P. A. 1852, s. 211. As to costs, see Croft v. London and County Banking Co. (1885), 14 Q. B.

D. 347.

(d) Gregory v. Wilson, 9 Hare, p. 689; Hill v. Barclay (1811), 18 Ves. p. 62; Bamford v. Creasy (1862), 3 Giff. 675; Bargent v. Thompson (1863), 4 Giff. 473. See judgment of Kay, L.J., in Barrow v. Isaacs, [1891] 1 Q. B. 417, p. 425. The statutory jurisdiction to grant relief in respect of non-insurance (22 & 23 Vict. c. 35, ss. 4—6; 23 & 24 Vict. c. 126, s. 2) is replaced by the provisions of sect. 14 of the C. A. 1881.

(e) Hill v. Barelay (1811), 18 Ves.

56, at p. 63.

land (f), or of a covenant to repair (g). And the jurisdiction is now similarly limited in cases not falling within sect. 14 of the Conveyancing Act, 1881 (h). Where a breach of a covenant against underletting was due to the lessee's solicitor forgetting that the consent of the lessor was required, the Court refused to grant relief (i). Either this was not a "mistake" within the meaning of the rule (k), or at any rate, since it was due to negligence for which the lessee was responsible, the case was not one in which a court of equity would interpose to grant relief (l).

(f) Descarlett v. Dennett (1722), 9 Mod. 22.

(g) Hill v. Barclay, supra; Gregory v. Wilson (1852), 9 Hare, 683; Brace-bridge v. Buckley (1816), 2 Price, 200.

(h) Sc., as amended by the Con-

veyancing Act, 1892.

(i) Barrow v. Isaacs, [1891] 1 Q. B.

417. See Eastern Telegraph Co. v. Dent, [1899] 1 Q. B. 835.

(k) Per Lord Esher, M.R., in Barrow v. Isaacs, supra, at p. 422.

(l) Per Lopes and Kay, L.JJ., in Barrow v. Isaacs, supra, at pp. 422, 426.

CHAPTER VII.

TERMS OF QUITTING.

		PA	G I
SECT.	I.		12
			13
			13
			lj
			16
		(2) Tenant's right to fixtures where there is no express	
			17
			18
			22
			23
		\ /	24
			26
			29
SECT.	II.	EMBLEMENTS	31
			31
		(2) Provision as to tenants of landlords entitled for uncer-	
		, _	32
SECT.	III.	AWAY-GOING CROPS AND NON-STATUTORY COMPENSATION	
		for Tillages, &c	
Sect.	IV.	STATUTORY COMPENSATION FOR IMPROVEMENTS 53	6
		(1) The Agricultural Holdings Acts, 1883 and 1900 53	37
		(2) The Allotments, &c., Act, 1887	8
		(8) The Tenants' Compensation Act, 1890	10
		(4) The Market Gardeners' Compensation Act, 1895 56	2
SECT.	V.	Delivery of Possession	H
		(1) Tenant's obligation to give possession	4
		Encroachments	H
		(2) Landlord's remedies for recovering possession 56	5
		(i) Indirect	5
		Action for double value	6
		Action or distress for double rent	8
		(ii) Direct	9
		Entry	9
		Forcible entry	9
		Statute of Limitations	0
		Action in the High Court	4
		,, ,, County Court	6
		Action to recover possession 57	
		,, of ejectment	
		Proceedings before justices	
		Houses at rents not exceeding 201. a year 579	9
		Deserted premises	l
		_	

SECT. I.—FIXTURES.

A CHATTEL which is annexed to the freehold by the tenant in such manner and under such circumstances as to become a part

of the freehold is a fixture. Ordinarily the property in fixtures passes to the landlord, in accordance with the maxim, Quicquid plantatur solo, solo cedit (a); but the tenant may be entitled, either under the general law or under the terms of his agreement, to sever the fixture and to regain his property in it (a). Hence it is necessary to ascertain (1) what articles are fixtures; (2) when a tenant is entitled to remove fixtures in the absence of express agreement; (3) when a tenant is entitled to remove them under the terms of his agreement.

(1) WHAT ARTICLES ARE FIXTURES.

The question whether a chattel is so fixed as to become parcel of Tests whether the freehold is a question of fact depending on the circumstances article a fixture. of each case, and principally on two considerations:—First, the mode of annexation to the soil or to the fabric of the building, and the extent to which it is united to them; whether it can be easily removed, integre, salve, et commode, or not, without injury to itself or the fabric of the building: and secondly, the object and purpose of the annexation; whether it was for the permanent and substantial improvement of the dwelling or of the inheritance, or merely for a temporary purpose, or the more complete enjoyment and use of it as a chattel (b).

It has been said that a fixture is anything annexed to the 1. Mode of freehold—that is, fastened to or connected with it, not in mere juxtaposition to the soil (c). In general, articles standing merely by their own weight upon the ground, or upon foundations prepared for them, are not fixtures. Thus the following articles or Instances of erections have been held not to be fixtures:—a barn placed upon pattens and blocks of timber lying upon the ground (d), or upon a foundation of brick and stone (e); a wooden windmill resting upon a brick foundation (f); vats supported by and rested on

non-fixtures.

- (a) Bain v. Brand (1876), 1 App. Cas. 762, judgment of Lord Chelmsford, p. 772. See Gibson v. Hammersmith Ry. Co. (1862), 2 Dr. & Sm. p. 608. As to the limitations upon this maxim, see Wake v. Hall (1883), 8 App. Cas. 195.
- (b) Per Parke, B., in Hellawell v. . *Eastwood* (1851), 6 Ex. 295; approved in Holland v. Hodgson (1872), L. R. 7 C. P. 328, though the correctness of the decision in Hellawell v. Eastwood on the facts was doubted.
 - (c) Per Lord Chelmsford in Bain

L.T.

- v. Brand (1876), 1 App. Cas. p. 772; and see the definition of a fixture in Amos and Ferard on Fixtures, 3rd ed. p. 2, quoted in Turner v. Cameron (1870), L. R. 5 Q. B. p. 311.
- (d) Culling v. Tuffnall (1694), Bull. N. P. 34. See Wiltshear v. Cottrell (1853), 1 E. & B. 674.
- (e) Wansbrough ∇ . Maton (1836), 4 A. & E. 884.
- (f) R. v. Otley (1830), 1 B. & Ad. 161; R. v. Londonthorpe (1795), 6 T. R. 377.

brickwork and timber, but not fixed in the ground (g); tanks, mash-tuns, &c., in a distillery, heavy and unattached, except by communicating pipes, to the walls or to the piers on which they stand (h); cisterns standing by their own weight (i); metal plates laid on the ground for flooring (k); weighing-machines placed in holes dug in the ground and lined with brickwork so that the weighing-plate is on a level with the surface of the ground (l); tram lines fastened to sleepers laid upon the ground, notwith-standing that they have sunk into the ground owing to the pressure of the traffic (m), provided the soil has not been specially prepared to receive them (n).

Instances of fixtures.

On the other hand, the cases in which the annexation has been held sufficient to constitute the article a fixture are The matter admits of little doubt where the chattel numerous. cannot be removed without great damage to the land (o), but an article easily removable may nevertheless be a fixture. The following articles have been held to be fixtures:-stills set in brickwork and let into the ground (p); a steam-hammer screwed to stone fastened with mortar to a foundation in the ground (k), and a boiler and furnace fixed in brickwork (k); a gas-engine fastened by bolts and screws to a bed of concrete (q); a portable engine and boiler bolted to a wooden framework, the framework being embedded in mortar laid upon a brick foundation (r); steam-engine, hay-cutter, and malt-mill fastened with screws and nuts (s); an engine screwed down to thick planks which lie upon the ground, and a boiler fixed in brickwork (t); straighteningplates embedded in the floor of a mill (u); a railway nailed to sleepers laid in ballast (x); a steam-crane screwed on to large

(g) Horn v. Buker (1808), 9 East, 215; commented upon in Reynolds v. Ashby and Son, [1903] 1 K. B. 87.

(h) Chidley v. West Ham Church-wardens (1874), 32 L. T. 486.

(i) Mather v. Fraser (1856), 2 K. & J. 536, 559.

(k) Metrop. Counties Society v. Brown (1859), 26 Beav. 454, 461.

(l) Ex parte Astbury (1869), L. R.

4 Ch. 630. (m) D. of Beaufort v. Bates (1862), 3 D. F. & J. 381. See Wood v. Hewett (1846), 8 Q. B. p. 919; Huntley v.

Russell (1849), 13 Q. B. p. 577, note (a).
(h) See Turner v. Cameron (1870),

L. R. 5 Q. B. 306.

(o) Wake v. Hall (1883), 8 App. Cas.

195, 204.

(p) Horn v. Baker (1808), 9 East, 215, 222.

(q) Hobson v. Gorringe, [1897] 1 Ch. 182; followed in Reynolds v. Ashby and Son, supra.

(r) Cross v. Barnes (1877), 46 L. J. Q. B. 479.

(s) Walmsley v. Milne (1859). 7 C. B. N. S. 115.

(t) Climie v. Wood (1869), L. R. 3 Ex. 257; L. R. 4 Ex. 328.

(u) Ex parte Asthury (1869), L. R. 4 Ch. 630.

(x) Turner v. Cameron (1870), L. R. 5 Q. B. 306; Ex parts Moore and Robinson's Banking Co. (1880), 14 Ch. D. 379, 386.

stones cramped together and laid on a prepared bed of mortar, the crane being kept in position by guys (y); looms in a cottonmill fastened by nails through the loom feet to wooden plugs in the floor (z), or to beams built into the floor (a); machinery annexed to the floor, ceilings, or sides of a building in a "quasipermanent manner" by means of bolts and screws (b); steamengines and boilers and mill-gear fastened in a mill and not standing merely by their own weight (c); the signboard of an inn, which on account of its special value has been removed to the inside of the inn and affixed to the wall of the hall (d); a greenhouse the framework of which is laid upon walls built for the purpose and which is fastened to them with mortar (e). It has been questioned, perhaps unnecessarily, whether a building becomes a fixture till it is completed; but at any rate, if the landlord supplies the materials, these cannot be taken away by the tenant (f).

But the test of physical annexation is not sufficient. When 2. The object an article is no further attached to the land than by its own weight, it is in general considered to be a mere chattel; but even in such a case the article will become part of the land if such appears to be the intention (g). Thus a wall built with blocks of stone without mortar is a fixture, though the stones stacked in the same shape in a builder's yard would be chattels. question is not whether the thing itself is easily removable, but whether it is essentially a part of the building itself from which it is proposed to remove it, as in the case of the grindstone of a flour-mill (h). So, statues and vases and stone garden seats,

of annexation.

(z) Boyd v. Shorrock (1867), L. R. 5 Eq. 72.

Hodgson (1872), (a) Holland \mathbf{v} . L. R. 7 C. P. 328.

(b) Longbottom v. Berry (1869), L. R. 5 Q. B. 123.

(c) Mather v. Fraser (1856), 2 K. & J. 536. Cf. Lincolnshire Finance Co. v. Farrant (1886), 2 T. L. R. 248.

(d) Lx parte Willoughby D'Eresby

(1881), 44 L. T. 781.

(e) West v. Blakeway (1841), 2 M. & Gr. p. 729; Jenkins v. Gething (1862), 2 J. & H. 520.

(f) Smith v. Render (1857), 27 L. J. Ex. 83.

(y) Holland v. Hodyson (1872), L. R. 7 C. P. p. 335. But the intention can only be proved from the degree and object of the annexation: S. C.; unless, indeed, there is also evidence of an agreement as to the articles, see Wood v. Hewett (1846), 8 Q. B. p. 919, and Mant v. Collins, there cited.

(h) D'Eyncourt v. Greyory (1866), L. R. 3 Eq. at p. 396. The case of a natural history collection was discussed in Viscount Hill v. Bullock, [1897] 2 Ch. 482, and it was held that the collection was not a fixture so as to pass, with the house, to the devisee.

⁽y) Ex parte Moore and Robinson's Banking Co., supra. See Davis v. Junes (1818), 2 B. & A. 165, where jibs fixed in a warehouse and easily removable were held to be chattels.

though resting by their own weight, are fixtures if they are part of the architectural design of the premises. Perhaps the true rule is, that articles not otherwise attached to the land than by their own weight are not to be considered as part of the land, unless the circumstances are such as to show that they were intended to be part of the land, the onus of showing that they were so intended lying on those who assert that they have ceased to be chattels; and that, on the contrary, an article which is affixed to the land even slightly is to be considered as part of the land, unless the circumstances are such as to show that it was intended all along to continue a chattel, the onus lying on those who contend that it is a chattel (i).

Whether for a temporary or permanent purpose.

And even though the physical annexation might be sufficient to constitute a fixture, it is further necessary to determine whether the article has been affixed for a temporary or permanent Things which are affixed to a building for its perpurpose. manent improvement, such as doors and windows, are fixtures (k); and so are pictures in panels and tapestry (1), and machinery erected for the better enjoyment of land (m). On the other hand, articles annexed to the building for a temporary purpose or the more complete use of them as chattels are not fixtures. An instance commonly referred to is a carpet stretched on the floor This is not a fixture (n), nor are curtains, lookingby nails. glasses, pictures, and other matters of an ornamental nature which have been slightly attached to the walls of a dwelling as furniture (o). And, similarly, it was held in a recent case (p) that chairs supplied on hire, and screwed down to the floor of a hippodrome, had not ceased to be chattels, and accordingly had not passed, as against the upholsterers who had let them for hire, by a mortgage of the building and fixtures.

Machines in a factory.

In Hellawell v. Eastwood (q) it was held that spinning mules fixed, some by screws to the wooden floor of a mill, and some by screws fastened with lead into holes in the floor, were not fixtures,

(i) Holland v. Hodgson, ubi sup. (k) Co. Litt. 53 a; Herlakenden's Case (1589), 4 Rep. 64 a; Climie v.

Wood (1869), L. R. 4 Ex. 328.

(m) Fisher v. Dixon (1845), 12 Cl. & F. 312.

(n) Hellawell v. Eastwood (1851),

6 Ex. 295, p. 313; Boyd v. Shorrock (1867), L. R. 5 Eq. 72, 79.

(o) Hellawell v. Eastwood, supra; Climie v. Wood (1869), L. R. 4 Ex. p. 329.

(p) Lyon v. London City and Midland Bank, [1903] 2 K. B. 135.

(q) Supra. See Waterfall v. Penistone (1856), 6 E. & B. 876.

⁽l) D'Eyncourt v. Gregory (1866), L. R. 3 Eq. 382. See, too, Leigh v. Taylor, [1902] A. C. 157.

on the ground that they were affixed for a temporary purpose, the object of the annexation not being to improve the inheritance, but merely to render the machines steadier and more capable of convenient use as chattels. But this appears to have been erroneous both in the use of the word "temporary" and in the object assigned for the annexation. The annexation is not tem-. porary if it is intended to last during the interest of the tenant in the premises (r), and if the machines, although steadied by the annexation and made more useful as machines, are really meant to enhance the value of the mill. Hence, in other similar cases, machines have been held to be fixtures (s). hydraulic press, fixed by bricks and mortar to the floor of a factory, which is a convenience, but not essential to carrying on the works, has been held to be a chattel (t), and so has a switchback railway, upon the ground that it was erected, not for the purpose of enhancing the value of the land, but only for the purpose of its more convenient use as machinery (u).

A gas-meter fixed in a private house is a chattel (x); but the retorts, boilers, gas-holders, &c., at gas works, which are essential for the purpose of the works, are fixtures (y).

Physical connection with the land is not essential to constitute Physical Keys are so identified with a house as to rank as connection a fixture. fixtures; and it is the same with the stone belonging to a mill (z). Similarly when machinery becomes a fixture, parts of it which are not fixed, but which are essential to its working, are fixtures also (a).

(2) TENANT'S RIGHT TO REMOVE FIXTURES WHERE THERE IS NO Express Agreement

The general rule is, that where a lessee, having annexed a Relaxations personal chattel to the freehold during his term, afterwards takes

in favour of tenant.

(r) See judgment of Wood, V.-C., in Boyd v. Shorrock, supra; Holland v. Hodgson (1872), L. R. 7 C. P. 328.

(s) Holland **v.** Hodgson, supra; Muther v. Fraser (1856), 2 K. & J. 536; Longbottom v. Berry (1869), L. R. 5 Q. B. 123; Cross v. Barnes (1877), 46 L. J. Q. B. 479; Walmsley v. Milne (1859), 7 C. B. N. S. 115.

(t) Parsons v. Hind (1866), 14 W. R. 860.

(u) Chamberlayne v. Collins (1894),

70 L. T. 217.

(x) But a gaselier passes upon the sale of a house with fixtures: Sewell v. Augerstein (1868), 18 L. T. 300.

(y) R. v. Lee (1866), L. R. 1 Q. B. 241.

(z) Moody v. Steygles (1879), 12 Ch. D. p. 267. See, too, Place v. Fagg (1829), 4 M. & Ry. 277.

(a) Fisher v. Dixon (1845), 12 Cl. & F. p. 330; Ex parte Astbury (1869), 4 Ch. 630; Metrop. Counties Society v. Brown (1859), 26 Beav

it away, it is waste (b); and the fact that the tenant cannot commit waste is the only reason why he cannot pull down and remove buildings during the term (c). In the progress of time, however, the rule has been relaxed by judicial decision in the case of fixtures put up for the purposes of trade or for ornament or domestic utility (d), and by statute in the case of agricultural fixtures. Relaxations in the strict rule of the ownership of fixtures have also been made as between the executor of a tenant for life and the remainderman, and, perhaps, as between the executor and the heir of a tenant in fee. But the greatest latitude in favour of the removal of fixtures is allowed in the case of landlord and tenant (e), and consequently decisions in favour of the executor in the other two cases are à fortiori decisions in favour of a tenant.

(i) Trade Fixtures.

Rule as to removal of trade fixtures. A tenant of premises who has himself erected fixtures for the purposes of his trade may at any time within the term remove them, provided they can be removed without material injury to the freehold (f). This relaxation is allowed at common law, and not by virtue of any special custom, in favour of trade and to encourage industry (g); or, as it has also been said, in support of the interests of trade, which is become the pillar of the state (h). Thus the tenant can remove machinery and utensils of a chattel nature, such as salt-pans (i), vats, &c., for soap-boiling (k), engines for working collieries (l) or other trade purposes (m); and also

454, 459; Mather v. Fraser (1856), 2 K. & J. 536; Sheffield Building Society v. Harrison (1885), 15 Q. B. D. 358 (leathern belts for driving machinery).

(b) Per Lord Ellenborough, C.J., in Elwes v. Maw (1803), 3 East, p. 51; per Dallas, C.J., in Buckland v. Butterfield, 2 Br. & B. at p. 58.

(c) Per Selborne, L.C., in Wake v. Hall (1880), 7 Q. B. D. p. 301. As to damages where tenant fails to deliver up fixtures to a landlord who has mortgaged them, see Watson v. Lane (1850), 11 Ex. 769.

(d) See Climie v. Wood (1869), L. R. 4 Ex. p. 329; Holland v. Hodgson (1872), L. R. 7 C. P. p. 333; Gibson v. Hammersmith Ry. Co. (1862), 2 Dr. & Sm. pp. 608, 609.

(e) Elwes v. Maw (1803), 3 East,

p. 51; Whitehead v. Bennett (1858), 27 L. J. Ch. p. 475.

(f) Per Kindersley, V.-C., in Gibson v. Hammersmith Ry. Co. (1862), 2 Dr. & Sm. p. 608; Lundon v. Salmon (1782), 1 H. Bl. 259, note (a).

(g) Per Holt, C.J., in Poole's Case (1704), 1 Salk. 368; Elives v. Marc (1803), 3 East, p. 52.

(h) Per Kenyon, C.J., in Penton v. Robart (1801), 2 East, p. 90.

(i) Lawton v. Salmon (1782). 1 H. Bl. 259, note (a).

(k) Poole's Case, supra.

(l) Lawton v. Lawton (1743), 3 Atk. 13; Dudley v. Warde (1751), Ambl. 113; Ward v. Countess of Dudley (1887), 57 L. T. 20.

(m) Climie v. Wood (1869), L. R. 4 Ex. 328, 330.

buildings of a slight description erected by the tenant for the purpose of carrying on his business, such as a varnish house, though on a brick foundation (n), or a shed, called a Dutch barn, set up for trading purposes (o). But a substantial building, although erected for the sole purpose of trade, cannot be removed (p), unless it is merely accessory to trade fixtures (q). The right of removal exists where things either can be taken away bodily, or, if by reason of their bulk and complexity it should be necessary to take them to pieces, can be put together in the same form in some other place (r).

Ordinarily a tenant cannot remove trees or shrubs (s), and a farmer who raises young fruit trees on the demised land for the purpose of filling up the lessor's orchards is not entitled to remove them (t). At common law it is plain that a tenant cannot cut down orchard trees, or remove them, or claim compensation for leaving them (u). But a nurseryman or market-gardener, in addition to his statutory rights to be presently mentioned, has a common law right (in the absence of any covenant or stipulation to the contrary in his lease), to remove trees and shrubs grown for sale (x); and also hothouses and glass-houses erected by him (y); but mere destruction is not allowed (z).

In the case of market gardens it is enacted by the Market Market Gardeners' Compensation Act, 1895, s. 3, that where, after the gardens and

(n) Penton v. Robart (1801), 2 East, 88.

(o) Dean v. Allaley (1799), 3 Esp. 11. See Fitzherbert v. Shaw (1789), 1 H. Bl. 258, decision of Gould, J.

(p) Whitehead v. Bennett (1858), 27 L. J. Ch. 474; Wake v. Hall (1880), 7 Q. B. D. p. 301. Thresher v. E. London Waterworks (1824), 2 B. & C. 608.

(q) Lawton ∇ . Lawton (1743), 3 Atk. 13, 16; per Lord Bramwell, in Wake v. Hall (1883), 8 App. Cas. p. 210; though in Whitehead v. Bennett Kindersley, V.-C., held that this fact did not make the building removable.

(r) Whitehead v. Bennett, supra, at p. 475.

(s) Empson v. Soden (1833), 4 B. & Ad. p. 657.

(t) Wyndham v. Way (1812), 4 **Taunt.** 316.

(u) Per Cozens-Hardy, J., in Mears v. Callender, [1901] 2 Ch. at p. 395.

(x) Wyndham v. Way (1812), 4 Taunt. 316, per Heath, J.; Penton v. Robart (1801), 2 East, p. 90; Oakley v. Monck (1866), L. R. 1 Ex. p. 167; Wardell v. Usher (1841), 3 Sc. N. R. **508.**

(y) See per Cozens-Hardy, J., in Mears v. Callender, [1901] 2 Ch. 388, at pp. 396, 397, discussing the opinions expressed by Lord Kenyon, C.J., in Penton v. Roburt (1801), 2 East, 88, 90, and by Lord Ellenborough in Elwes v. Maw (1802), 3 East, 38, 57. See, too, Buckland v. Butterfield (1820), 2 Br. & B. at p. 58; Amos and Ferard on Fixtures, 3rd ed. p. 103. In Scotland greenhouses erected by nursery gardeners have been held to be removable, at any rate so far as they do not consist of brickwork: Syme v. Harvey (1861), 24 Sess. Cas. 2nd series, 202.

(z) Oakley v. Monck, supra; Watherell v. Howells (1808), 1 Camp. 227.

commencement of that Act (i.e., after the 1st January, 1896), it is agreed in writing that a holding shall be let or treated as a market garden, it shall (sub-sect. (5)) be lawful for the tenant to remove all fruit trees and fruit bushes planted by him on the holding and not permanently set out; but that if he does not remove them before the termination of his tenancy, they shall remain the property of the landlord, and the tenant shall not be entitled to any compensation in respect thereof (a). The tenant of an allotment under the Allotments Act, 1887 (b), may, before the expiration of his tenancy, remove any fruit and other trees and bushes, planted or acquired by him, for which he has no claim for compensation (c). He may also, before the expiration of his tenancy, remove any building which he is permitted under the statute to erect upon the allotment—i.e., a tool-house, shed, greenhouse, fowl-house, or pig-stye (d).

Custom.

Removal must be without injury to freehold.

Compulsory purchase.

Right of removal as against mortgagee.

It seems that a custom of the neighbourhood as to the removal of articles erected by a tenant may be taken as an explanation of their nature and character (e).

Trade fixtures can only be removed if the removal can be effected without material injury to the freehold (f). If they cannot be removed without material injury, the tenant has no right to inflict that injury or to remove them at all (g). But for the purpose of the removal of fixtures trifling damage is not regarded (h).

A railway company which takes leasehold premises compulsorily is bound to take the trade fixtures as well (i).

The rules as to the right of removing fixtures which have been established as between landlord and tenant have no application where the person who affixes chattels to the soil is himself the owner in fee, and, upon a conveyance by him in fee by way of

- (a) As to the holdings to which this Act (58 & 59 Vict. c. 27) applies, and its application to tenancies current at the date of its commencement, see infra, p. 562. As to the right under the same Act to remove fixtures and buildings, see infra, p. 524.
 - (b) 50 & 51 Vict. c. 48.
 - (c) Sect. 7 (6). (d) Sect. 7 (5).
- (e) Judgment in Davis v. Jones (1818), 2 B. & A. p. 168; Trapper v. Hart (1833), 2 Cr. & M. p. 181; Culling v. Tuffnall (1694), Bull.

- N. P. 34.
- (f) Trapper v. Hart (1833), 2 Cr. & M. p. 181.
- (g) Gibson v. Hammersmith Ry. Co. (1862), 2 Dr. & Sm. p. 608. See, too, Wake v. Hall (1883), 8 App. Cas. p. 205.
- (h) Martin v. Rowe (1857), 7 E. & B. 244. As to the right of an underlessee to remove trade fixtures, see Porter v. Drew (1880), 5 C. P. D. 143: supra, p. 417.
- (i) Gibson v. Hammersmith Ry. Co. (1862), 2 Dr. & Sm. 603.

mortgage, the fixtures, unless expressly excepted, will pass to the mortgagee, and the mortgagor will have no right to remove them as against the mortgagee, whether they have been affixed before (k)or after (1) the mortgage. It is clear law that, though a fixture may be removable as between landlord and tenant, or as between tenant for life and remainderman, being attached so and under such circumstances as to show it to be a fixture in that sense only, and not so as to make it permanently part of the freehold, yet it nevertheless will form part of the property subject to a mortgage of the premises, and a mortgagor cannot remove it as against a mortgagee (m). What are commonly known as trade or tenant's fixtures form part of the land, and pass by a conveyance of it (n); and though, if the person who erected those fixtures was a tenant with a limited interest in the land, he has a right, as against the freeholder, to sever the fixtures from the land, yet if he be a mortgagor in fee he has no such right as against his mortgagee (o). And the effect of a mortgage by a lessee by way of assignment of the term is the same as regards fixtures, whether affixed before or after the mortgage, as if the mortgagor had been a freeholder and the mortgage a mortgage in fee (p). Hence trade fixtures and the right of removing them will pass to the mortgagee (q). Trade fixtures will equally pass under a mortgage by subdemise, but in this case the absolute property in the fixtures as separate chattels with the right to remove and sell them will not pass to the mortgagee unless an intention to that effect is apparent in the deed (r).

(k) Mather v. Fraser (1856), 2 K. & J. 536; Climie v. Wood (1868), L. R. 3 Ex. 257; L. R. 4 Ex. 328; Holland v. Hodgson (1872), L. R. 7 C. P. 328.

(l) Walmsley v. Mylne (1859), 7 C. B. N. S. 115, p. 138; Longbottom v. Berry (1869), L. R. 5 Q. B. 123.

(m) Per Collins, M.R., in Reynolds v. Ashby and Son, [1908] 1 K. B. 87, at p. 99.

(n) A mortgage of a house "with all fixtures" includes such things as are substantially part of the house, so that they could not be removed without depriving the house of what was intended to be used with it: Smith v. Muclure (1884), 32 W. R. 459. Thus gas fittings and gaseliers, pier-glasses in frames, and cornice-

poles were held to be fixtures; but not vallances separate from the cornices, or mantel-boards lying unfixed on the mantel-pieces.

(o) Per Blackburn, J., in delivering judgment of the Exch. Ch. in Holland v. Hodgson, supra, at p. 333.

(p) Meux v. Jacobs (1875), L. R. 7 H. L. 481. See Boyd v. Shorrock (1867), L. R. 5 Eq. 72.

(q) Meux v. Jacobs, supra, at p. 491. An express power for the mortgagee to sell trade fixtures separately from the land constitutes the mortgage a bill of sale as to those fixtures: Johns v. Ware, [1899] 1 Ch. 359.

(r) Southport Banking Co. v. Thompson (1887), 37 Ch. D. 64, explaining Hawtry v. Butlin (1873), L. R. 8 Q. B. 290.

Rights of third parties as against mortgagee. Where machinery or other fixtures are put up by a third party at the order of the mortgagor, under an agreement that such third party shall in certain events have the right to remove them—as where they are put up under a hire and purchase agreement—the third party will be entitled to remove them as against the mortgagee, if they were put up after the mortgage, and while the mortgagor was in possession; for the mortgagee by allowing the mortgagor to remain in possession acquiesces in his making agreements for fixing and removing trade fixtures (s). But where the fixture is put up previously to the mortgage, a mortgagee without notice takes the fixture free from the agreement, unless the agreement has been made in such a way as to run with the land (t).

Right of tenant as against mortgagee. Upon the same principle, where a mortgagor in possession lets premises to a tenant, the tenant is entitled to remove fixtures as against the mortgagee, even though the tenancy is not binding on the mortgagee (u).

(ii) Agricultural Fixtures.

No relaxation at common law as to agricultural fixtures. At common law the relaxation in favour of the tenant, which has been allowed in the case of trade fixtures, is denied to agricultural fixtures, and farm buildings, machinery, &c., erected by agricultural tenants, and affixed to the soil (x), before 24th July, 1851, could not be removed by them (y) unless there was an express agreement to that effect.

Statutory relaxations.

Buildings, engines, and machinery erected since that date, with the consent of the landlord in writing, may be removed by virtue of the Landlord and Tenant Act, 1851(z); and further relaxations in favour of the tenant have been introduced by the Agricultural Holdings Acts of 1883 and 1900 (a).

Landlord and Tenant Act, 1851, s. 3. The Act of 1851 enacts (b) that if any tenant of a farm after 24th July, 1851, with the consent in writing of the landlord, at

(s) Gough v. Wood & Co., [1894] 1 Q. B. 713. The decision in Cumberland Banking Co. v. Maryport Iron Co., [1892] 1 Ch. 415, can be supported on the same ground. See, however, the observations upon Gough's Case in the judgments of the C. A. in Reynolds v. Ashby and Son, [1903] 1 K. B. 87.

(t) Hobson v. Gorringe, [1897] 1 Ch. 182; Thomas v. Jennings (1896), 45 W. R. 93; Reynolds v. Ashby and Son, supra. Distinguish Lyon v. London City and Midland Bank, [1903] 2 K. B. 135, 139.

(u) Sanders v. Davis (1885), 15 Q. B. D. 218.

(x) See supra, p. 513.

- (y) Elwes v. Maw (1802), 3 East. 38.
 - (z) 14 & 15 Vict. c. 25.
- (a) 46 & 47 Vict. c. 61 and 63 & 64 Vict. c. 50.
 - (b) Sect. 3.

his own cost erects any farm building, or puts up any other building, engine, or machinery, either for agricultural purposes or for the purposes of trade and agriculture (not erected in pursuance of an obligation in that behalf), such buildings, engines, and machinery are the property of the tenant, and are removable by him, notwithstanding that they are permanently affixed to the soil, provided the land or buildings of the landlord are not injured; but the tenant must give the landlord one month's notice of his intention to remove the fixtures, and the landlord has the option of purchasing them at a valuation.

By the 34th section of the Agricultural Holdings Act, 1883, Agric. Holdit is enacted (c) that where, after the 1st of January, 1884, a 1883 and 1900. tenant affixes to his holding (d) any engine, machinery, fencing, or other fixture (e), or erects any building for which he is not under that Act or otherwise entitled to compensation, and which is not so affixed or erected in pursuance of some obligation in that behalf, or instead of some fixture or building belonging to the landlord, such fixture or building shall be the property of and removable by the tenant (f) before or within a reasonable time after the termination of the tenancy. And by the 4th section of the Agricultural Holdings Act, 1900, it is enacted that the provisions of the 34th section of the Act of 1883 shall apply to a fixture or building acquired by a tenant, in like manner as they apply to a fixture or building affixed or erected by a tenant.

The tenant's right of removal is, however, subject (q) to the following conditions (h), viz.:—(i) Before the removal of any fixture or building, the tenant must pay all rents owing by him, and perform or satisfy all other his obligations to the landlord in respect to the holding; (ii) in the removal of any fixture or building the tenant must not do any avoidable damage to any

(c) Agric. Hold. Act, 1883, s. 34; Agric. Hold. Act, 1900, s. 4.

(d) For the holdings to which the

Acts apply, see infra, p. 537.

immediately before.

(f) See Mears v. Callender, [1901] 1 Ch. 388, in which case sect. 34 had been lawfully excluded by the lease, but the tenant was nevertheless held to be entitled to exercise a common law right of removing glass-houses.

(g) Agric. Hold. Act, 1883, s. 34.

(h) If these conditions are not complied with, or if the fixtures or buildings are not removed within a reasonable time, the landlord will, it is conceived, enjoy his common law rights with respect to them.

⁽e) It may be an arguable question whether the words "other fixture" here mean agricultural fixtures only, or extend to articles of ornament or domestic utility generally, such as are discussed infra, p. 524. It is suggested that the object of the enactment stated in the text is sufficiently answered if the words in question are confined to fixtures ejusdem generis with those specified

other building or other part of the holding; (iii) immediately after the removal of any fixture or building, the tenant must make good all damage occasioned to any other building, or other part of the holding, by the removal; (iv) the tenant must not remove any fixture or building without giving one month's previous notice (i) in writing to the landlord of the tenant's intention to remove it; and (v) at any time before the expiration of the notice of removal the landlord may, by notice (i) in writing given by him to the tenant, elect to purchase any fixture or building comprised in the notice of removal, and any fixture or building thus elected to be purchased must be left by the tenant, and becomes the property of the landlord, he paying to the tenant the fair value of the purchased fixture or building to an incoming tenant of the holding; any difference as to the value to be settled by a reference to arbitration under the Acts of 1883 and 1900, as in cases of disputed claims of compensation for improvements (j), but without appeal (k).

Market Gardeners' Compensation Act, 1895. By sect. 3 (1) of the Market Gardeners' Compensation Act, 1895 (1), the provisions of the 34th section of the Agricultural Holdings Act, 1883, are extended to every fixture or building affixed or erected by the tenant to or upon a holding to which the third section of the Act of 1895 applies (m) for the purposes of his trade or business of a market gardener.

(iii) Articles of Ornament and Domestic Utility.

Matters of ornament.

The indulgence in favour of the tenant for years has been carried beyond trade fixtures, and he is allowed to remove

(i) The tenant's notice may be in the following form:— "To Mr. A. B.

I hereby give you notice that, under the provisions of the Agricultural Holdings Acts, 1883 and 1900, I intend, after the lapse of one month from your receipt of this notice, to remove from the premises which I now hold of you as tenant, the [engine and boiler] erected by me thereon [or as the case may be].

Dated the —— day of ——, 19—.

And the landlord's counter-notice may be in the following form:—
"To Mr. C. D.

Referring to your notice, dated

the — day of —, 19—, of your intention to remove the fixtures specified therein from the premises held by you under me, I hereby give you notice that I intend to purchase the said fixtures [or some of them, to be enumerated].

Dated the —— day of ——, 19—.
A. B."

(j) See infra, p. 544.

(k) Sc. to the county court; see in/ra, p. 547.

(1) 58 & 59 Vict. c. 27.

(m) I.e., a holding with respect to which it has, subsequently to the 1st January, 1896, been agreed that it shall be let or treated as a market garden.

matters of ornament (n). The articles which are mentioned in this connection in the old cases are marble chimney-pieces (o), chimney-glasses or pier-glasses (p), tapestry or hangings (q), and wainscot fixed with screws (r). And more recently a cornice has been included (s). For an article to fall within the present category it is essential that it should be ornamental (s), and a tenant cannot remove a chimney-piece put up by himself which is not ornamental (t), even though it is made of marble (u). On the other hand, provided it is ornamental, he may remove it though it is not made of marble (u).

A relaxation is also made, however, in favour of articles of Articles of domestic utility generally, though it is not easy to reconcile it with the requirements just mentioned that articles should be of an ornamental character. Thus the tenant may remove such articles as stoves and grates (x); beds fastened to the wall or ceiling (y); kitchen ranges, ovens, and coppers (z); pumps (a); bells (b); and cupboards (c). It has been suggested that this category is restricted to articles which are perfect chattels in themselves (d), and at any rate the relaxation does not extend to a building, such as a greenhouse, whether adjoining the dwellinghouse (e) or erected in the garden (f), or to such things as pillars of brick and mortar built on a dairy floor to hold milk-pans (g).

(n) Elwes v. Maw (1802), 3 East, p. 53; Buckland v. Butterfield (1820), 2 Br. & B. p. 58.

(o) Elwes v. Maw, supra; Lawton v. Lawton (1743), 3 Atk. p. 15; Lawton v. Salmon (1782), 1 H. Bl. 259, note (a); Allen v. Allen (1728), Moselev, 112.

(p) Elwes v. Maw, supra; Beck v. Rebow (1706), 1 P. Wms. 94.

(q) Elwes v. Maw, supra; Squier v. Mayer (1701), 2 Eq. Cas. Abr. **430**; *Harvey* **v.** *Harvey* (1741), 2 Str. 1141; Beck v. Rebow, supra. See Norton v. Dashwood (1896), 12 T. L. R. **512.**

(r) Elwes v. Maw, supra; Lawton v. Lawton, supra.

(s) Avery ∇ . Cheslyn (1835), 3 A. & E. 75.

(t) Leach v. Thomas (1835), 7C. & P. 327.

(u) Bishop v. Elliott (1855), 24 L. J. Ex. 229.

(x) Grymes v. Boweren (1830), 6 Bing. 437, 439; R. v. Dunstan (1825), 4 B. & C. 686, p. 691; Ex parte Barclay (1855), 5 D. M. & G. p. 410; R. v. Lee (1866), L. R. 1 Q. B. p. 254.

(y) Ex parte Quincy (1750), 1 Atk. p. 478.

(z) Grymes v. Boweren, supra; Lawton v. Lawton (1743), 3 Atk. p. 15. See Winn v. Ingilby (1822), 5 B. & A. 625; Darby v. Harris (1841), 1 Q. B. 895.

(a) Grymes v. Boweren, supra.

(b) Lyde v. Russell (1830), 1 B. & Ad. 394. See Pugh v. Arton (1869), L. R. 8 Eq. p. 629.

(c) R. v. Dunstan, supra; Ex parte Barclay, supra.

(d) Amos and Ferard on Fixtures, 3rd ed. p. 117.

(e) Buckland v. Butterfield (1820), 2 Br. & B. 54.

(f) Jenkins v. Gething (1862), 2 J. & H. 520. A boiler built into the masonry of the greenhouse is irremovable, but the pipes of the heating apparatus, connected with the boiler by screws, are removable: S. C.

(g) Leach v. Thomas (1835), 7 C. & P. 327. A shed built on brickutility.

The tests whether an article falls under the present class seem to be (1) that it is an article of domestic convenience, (2) that it is slightly affixed, and (3) that it can be moved entire (h). A ladder and crane fastened to the premises, and put up for the ordinary use and convenience of the premises, have been held to be irremovable (i).

Must be removable without injury to freehold.

It is a condition precedent to the removal alike of articles of ornament and articles of domestic convenience, that they can be removed without material injury to the freehold (k); though, where fixtures attached to brickwork are removable, the tenant is not bound to restore the brickwork to a perfect state as though the article was still there: it is sufficient to leave it in such a state as would be most useful and beneficial to the lessor or to the next tenant (l).

(iv) When Fixtures can be Removed.

Time of removal.

The tenant must remove his fixtures during the continuance of his original term (m), or during such further period of possession by him as he holds the premises under a right still to consider himself as tenant (n). Other forms in which the rule has been expressed are: "during his term, or during what may for this purpose be considered an excrescence on the term" (o); and "during the term, or during such time as he may hold

work, and posts and rails, have been held to be removable: Fitzherbert v. Shaw (1789), 1 H. Bl. 258, per Gould, J., p. 259; though in Elwes v. Maw (1802), 3 East, p. 55, it is pointed out that in Fitzherbert v. Shaw the question did not properly arise.

(h) Grymes v. Boweren (1830), 6 Bing. p. 440. The following articles are enumerated in Amos and Ferard on Fixtures (3rd ed. p. 411, note (a)) as being recognized in practice as removable by the tenant, though there has been no legal decision respecting them: shelves, cabinets, &c., planned and fitted, dressers, presses, bins, fixed cisterns and sinks, iron chests, turret and other clocks, gas fittings and lamps.

(i) Wilde v. Waters (1855), 16 C. B. 637.

(k) Avery v. Cheslyn (1835), 3 A. & E. 75; Ex parte Barclay (1855), 5 D. M. & G. p. 410. See R. v. Dunstan (1825), 4 B. & C. 686. (l) Foley v. Addenbrooke (1844), 13 M. & W. p. 196.

(m) Lyde v. Russell (1830), 1 B. & Ad. 394, 395; Minshall v. Lloyd (1837), 2 M. & W. 450. See Poole's Case (1704), 1 Salk. 368. The same rule applies to the removal of fruit trees and bushes by a market gardener under sect. 3 (5) of the Market Gardeners' Compensation Act, 1895 (supra, p. 520); but fixtures and buildings are removable under sect. 3 (1) of that Act and sect. 34 of the Agricultural Holdings Act, 1883. before or within a reasonable time after the termination of the tenancy (supra, pp. 523, 524).

(n) Weeton v. Woodcock (1840). 7 M. & W. 14, 19; Penton v. Robert (1801), 2 East, 88; Leader v. Homewood (1858), 5 C. B. N. S. 546.

(o) Mackintosh v. Trotter (1838), 3 M. & W. p. 186, per Parke, B. possession after the term in the capacity of a tenant "(p). exact meaning of the extension thus allowed is not clear (q), but the right of removal certainly does not last till the tenant has evinced an intention to abandon his claim to the fixtures (q), nor, as suggested in Climie v. Wood(r), is the tenant, as a general rule, allowed a reasonable time after the expiration of the term. Probably a tenant simply holding over on sufferance could not remove fixtures (s), though he might if he had reasonable ground for assuming consent by the landlord (t), or if his interest was of uncertain duration (u). He cannot remove them after the landlord, by bringing an action of ejectment, has shown that he has ceased to regard the lessee as his tenant (x). If the tenant does not remove the fixtures during the term, or during such additional time as may thus be allowed, the property in them vests finally in the owner of the reversion (y).

The rule requiring the tenant to remove the fixtures, if at all, Removal on during the term (z), applies equally whether the term expires by forfeiture or surrender. effluxion of time, or by forfeiture (a), or by surrender (b), save that the tenant cannot by a surrender of the lease defeat the rights of a third party, such as a mortgagee whose security includes the fixtures (c). On such a surrender, a mortgagee or purchaser from the tenant of the fixtures is entitled to remove them within a reasonable time; and a similar right has been held to belong to debenture-holders of a lessee company, where the company had, without the debenture-holders' concurrence, brought about the determination of the lease by going into

(p) Roffey v. Henderson (1851), 17 Q. B. p. 586, per Patteson, J.

(q) See Leader v. Homewood, supra, at p. 553.

(r) (1869), L. R. 4 Ex. p. 329.

(s) Leader v. Homewood, supra. The right of removal does not necessarily continue so long as the tenant remains in possession: Deeble v. M'Mullen (1857), 8 Ir. C. L. R. 355, p. 365; though the contrary was intimated in Penton v. Robart (1801), See Heap v. Burton 2 East, 88. (1852), 12 C. B. 274; Cumberland Banking Co. v. Maryport Iron Co., [1892] 1 Ch. p. 426.

(t) See Ex parte Brook (1878), 10

Ch. D. p. 109.

(u) Ex parte Brook, supra; Oakley v. Monck (1866), L. R. 1 Ex.

p. 164.

(x) Barff v. Prohyn (1895), 11 T. L. R. 467.

(y) Poole's Cuse (1704), 1 Salk. 368;

Meux v. Jacobs (1875), L. R. 7 H. L. p. 490.

(z) Including such extension of it as is allowed by the rule; supra, p. 526.

(a) Pugh v. Arton (1869), L. R. 8 Eq. 626; Minshall v. Lloyd (1837), 2 M. & W. 450; Weeton v. Woodcock (1840); 7 M. & W. 14.

(b) Ex parte Brook (1878), 10

Ch. D. 100, 110.

(c) London and Westminster Loan Co. v. Drake (1859), 28 L. J. C. P. 297; Saint v. Pilley (1875), L. R. 10 Ex. 137.

Removal by trustee in bankruptcy.

voluntary liquidation (d). Where a trustee in bankruptcy applies for leave to disclaim, the Court may make such order as it thinks just with respect to fixtures and tenant's improvements (ϵ) , and ordinarily, it is conceived, the order will be that either the landlord must take over the fixtures at a valuation, or the trustee must have a reasonable time to sever and remove them (f).

Removal under agreement. The rule is different where the lease itself confers on the tenant the right to remove the fixtures, and in that case a reasonable time after the expiration of the lease is allowed for their removal (g).

Licence to remove fixtures.

A licence by the landlord to take away fixtures, if not under seal, will not be a valid grant of that privilege as against a new tenant in possession who is not a party to the licence (h). So an agreement not under seal, under which the fixtures are to be left with a view to their being purchased by the incoming tenant, and otherwise the old tenant is to be at liberty to remove them, does not bind mortgagees without notice, who claim under a deed dated subsequently to the erection of the fixtures (i).

A tenant who, upon quitting, leaves upon the land fixtures which he would be entitled to remove, under a parol agreement with the landlord that the latter shall take them at a valuation, can recover their value. The agreement does not relate to an interest in land so as to necessitate its being in writing (k).

Effect of new lease.

It may be that, if the tenant takes a new lease commencing from the expiration of the old one, and does not expressly reserve his right to fixtures, the fixtures will pass under the new lease as the landlord's property, free from any right of removal by the tenant (l); but the statements to this effect in the judgments in

(d) Re Glasdir Copper Works, [1904] 1 Ch. 819, in which case Joyce, J., observed (at p. 824) that the headnote in Pugh v. Arton, supra, p. 527, went beyond the decision, and was not in accordance with the law.

(e) Bankruptcy Act, 1883, s. 55 (3); supra, p. 458.

(f) Re Moser (1884), 13 Q. B. D. 738.

(g) See Stansfield v. Mayor of Portsmouth (1858), 4 C. B. N. S. 120; Sumner v. Bromilow (1865), 34 L. J. Q. B. 130.

(h) Roffey v. Henderson (1851), 17 Q. B. 574.

(i) Thomas v. Jennings (1896), 45 W. R. 93.

(k) Hallen v. Runder (1834), 1 C. M. & R. 266; Lee v. Gaskell (1876), 1 Q. B. D. 700. See Lee v. Risdon (1816), 7 Taunt. 188. And as to damages for the wrongful removal of fixtures, see Thompson v. Pettitt (1847), 10 Q. B. 101; McGregor v. High (1870), 21 L. T. 803.

(l) Ex parte Willoughby D'Eresby (1881), 44 L. T. 781, 784; 2 Sm. L. C. 11th ed. p. 221. See, too, Thorpe v. Milligan (1857), 5 W. R. 337.

Ex parte Willoughby D'Eresby are not to be taken as settling the question (m).

(3) TENANT'S RIGHT TO REMOVE FIXTURES UNDER EXPRESS AGREEMENT.

The general rule with respect to annexation to the freehold is always open to variation by agreement of the parties (n), and hence the common law rights of a tenant may be either extended or restricted by the terms of the lease; but a lease ought not to be construed so as to take away the ordinary legal rights of the tenant to remove trade or other fixtures, unless such an intention is clearly expressed (o). When a house is let to a tenant for the purposes of a trade, if the landlord wishes to restrict his tenant's ordinary right to remove trade machinery or fixtures, attached to the demised premises so as to be more conveniently used, and not placed there as an addition or improvement to the premises, the landlord must say so in plain language. If the language used in the lease leaves the matter doubtful, the ordinary right of the tenant to remove trade fixtures will not be affected (p).

A clause which frequently has the effect of taking away the tenant's rights is the covenant to yield up in repair, and the tenant may by such a covenant be precluded from removing any fixtures to which it applies, including fixtures erected for the purposes of trade (q). The following are instances of the application of this principle:—

COVENANT to keep in repair the demised premises and all erections, Construction buildings and improvements erected thereon during the term, covenants. and to yield up the same at the end of the term. The tenant cannot remove a verandah the lower part of which is affixed to the ground by means of posts (r); or the sashes and framework of a greenhouse, the framework being fixed by mortar to walls built to receive it (s).

of particular

(m) Ex parte Willoughby D'Eresby (1881), 44 L. T. p. 785.

(n) Wood v. Hewett (1846), 8 Q. B. p. 919. Where in ejectment against the tenant an agreement is made to stay proceedings for a specified period, the tenant's right to remove fixtures seems to be gone: Fitzherbert v. Shaw (1789), 1 H. Bl. 258; Heap v. Barton (1852), 21 L. J. C. P. 153.

(o) D. of Beaufort v. Bates (1862), 3 D. F. & J. 381, 390.

(p) Lambourn v. McLellan, C. A., [1903] 2 Ch. 268, 277, reversing Kekewich, J., [1903] 1 Ch. 806.

(q) Burt v. Haslett (1856), 18 C. B.

162, 893.

(r) Penry v. Brown (1818), 2 Stark. 403.

(s) West v. Blakeway (1841), 2 M. & Gr. 729, 754. But in both

- Covenant to yield up in repair at the expiration of the lease all erections and buildings which should be erected and built during the term on the demised premises. The tenant cannot remove trade buildings if annexed to the free-hold (t); though otherwise if they merely rest on blocks or pattens (u). In the latter case they are not erections or buildings within the meaning of the covenant (u).
- Covenant to leave at the end of the term a water-mill with all fixtures and improvements during the term fixed or set up upon the premises in good condition. The tenant cannot remove a pair of new millstones set up by him during the term, although under the custom of the country he would have been entitled to do so (x).
- Covenant to yield up certain scheduled articles, together with all doors, &c. (mentioning a long list of various articles), and other additions, improvements, fixtures and things. Held, that since the specified articles belonged to no assignable genus, the general words were not restricted by the rule of ejusdem generis, and the lessee had no title to tenant's fixtures (y).
- COVENANT, in a lease of salt works, to leave the works in good repair at the end of the term. This prevents the removal of salt-pans placed in frames of brick (z). But such a covenant does not embrace articles which are not fixtures (a).

Where, however, the reference to fixtures generally is preceded by specific words which comprise landlord's fixtures only, the general words will be restricted accordingly. Or, in other words.

these cases the tenant would probably have no right of removal even apart from the covenant.

(t) Though otherwise he would have been entitled to remove them. See Martyr v. Bradley (1832), 9 Bing. p. 29; Bidder v. Trinidad Petroleum Co. (1868), 17 W. R. 153, and (in connection with the last-mentioned case) Lambourn v. McLellan, [1903] 1 Ch. 806, reversed [1903] 2 Ch. 268.

(u) Naylor v. Collinge (1817), 1 Taunt. 19. See supra, p. 341, and Foley v. Addenbrooke (1844), 13 M. & W. 174. For a covenant to repair and yield up engines erected for purpose of trade, see R. v. Topping (1825), M'Clel. & Y. 544. (x) Martyr v. Bradley (1832), 9 Bing. 24. And so, generally, as to substituted fixtures, where there is a covenant to repair: Sunderland v. Newton (1830), 3 Sim. 450.

(y) Wilson v. Whateley (1860), 1 J. & H. 436. For effect of covenant giving the landlord power in certain events to "seize and retain . . . all fixtures whatsoever, whether tenant's or trade fixtures or otherwise," see Dumergue v. Rumsey (1863), 2 H. & C. 777.

(z) E. of Mansfield v. Blackburne (1840), 6 Bing. N. C. 426. See, too. Cosby v. Shaw (1887), 23 L. R. Ir. 181.

(a) D. of Beaufort v. Bates (1862), 3 D. F. & J. 381.

where in such a covenant the things particularly enumerated belong to one genus—landlord's fixtures, for instance—general words which follow are to be construed as applying only to things of the same genus (b).

Thus a covenant "to deliver up the demised premises, together with all locks, &c., and other fixtures and articles in the nature of fixtures, which shall at any time during the said term be fixed or fastened to the said demised premises, or be thereto belonging," leaves the tenant at liberty to remove fixtures of the description known as tenant's and trade fixtures (c).

If a lessee who has erected trade fixtures takes a new lease Effect of with a covenant to repair, he will be bound to repair the fixtures, unless there are strong circumstances to show that they were not intended to pass under the words of the second demise (d).

new lease.

The mere removal and sale by a tenant, during the term, of Removal of fixtures, which he does not immediately replace, but which can during term. be replaced before the end of the term, is not of itself a breach of his covenant to repair and uphold the demised premises, and to deliver up the same at the end of the term, together with all things affixed thereto (e).

Trade fixtures are not in the reputed ownership of the lessee, Reputed and the lessor may take them under a special agreement, notwithstanding the lessee's bankruptcy (f).

SECT. II.—EMBLEMENTS.

(1) IN WHAT CASES THEY MAY BE CLAIMED.

At common law tenants for will (g) or from year to year (h), or Rights to for other uncertain interests, were, and, except in cases falling within the Landlord and Tenant Act, 1851 (i), still are, upon the determination of the tenancy, entitled to the benefit of the growing crops, subject to the following conditions:—(1) The

(b) Lambourn v. McLellan, C. A., [1903] 2 Ch. 268, reversing Kekewich, J., [1903] 1 Ch. 806.

(c) Bishop v. Elliott (1855), 11 Ex. 113, 321. See, too, Sumner v. Bromilow (1865), 34 L. J. Q. B. 130; Wilde v. Waters (1855), 16 C. B. 637; Dumergue ∇ . Rumsey (1863), 2 H. & C. p. 788; also Lambourn v. McLellan, supra, where ([1903] 2 Ch. at p. 274) the different meanings with which the expression "landlord's fixtures" is used were pointed out by Vaughan

Williams, L.J.

(d) Thresher v. East London Water Works (1824), 2 B. & C. 608.

(e) Doe v. Davis (1851), 15 Jur. 155. (f) Clark v. Crownshaw (1832), 3 B. & Ad. 804. See Storer v. Hunter (1824), 3 B. & C. 368.

(g) Litt. s. 68.

(h) Kingsbury ∇ . Collins (1827), 4 Bing. p. 207; Graves v. Weld (1833), 5 B. & Ad. p. 114.

(i) 14 & 15 Vict. c. 25, s. 1; mentioned infra, p. 533.

tenancy must not be determined by the tenant's own act, as where he surrenders, or where a tenant who holds durante viduitate marries (k); and for this purpose a determination by forfeiture is deemed to be due to the tenant's own act, although it is the lord who enforces the forfeiture (l); (2) the tenant is only entitled to such crops growing upon the land as ordinarily repay the labour by which they are produced in the year in which that labour is bestowed, though the crop may in extraordinary seasons be delayed beyond that period (m); thus grain crops (n), clover (o), hemp, flax (p), and potatoes (q) may be claimed as emblements; and also hops, since, though the plants are not renewed, so much labour and expense are incurred over the old plants as to make the annual profits a proper recompense for the year's expenditure (r); but permanent or natural profits of the earth, such as fruit trees or grass (s), do not come within that designation.

A person entitled to emblements may enter upon the lands after the determination of his tenancy for the purpose of cutting and carrying away the crops (t), for where the law gives anything to any one it gives impliedly whatever is necessary for the taking and enjoying of the same (u). The right to emblements passes on the death of the lessee to his executors (x); and where the tenant has agreed to share the crop with a third person, such third person is entitled to take the crop as emblements (y).

(2) Provision as to Tenants of Landlords entitled for uncertain Interests.

In the case of tenants whose term is uncertain by reason of its being liable to fall with the estate of a landlord entitled for

(k) Bulwer v. Bulwer (1819), 2 B. & A. p. 471; Oland's Case (1602), 5 Rep. 116 a.

(l) Davis v. Eyton (1830), 7 Bing. 154. But it is conceived that an underlessee may take emblements though the headlesse is determined

though the headlease is determined by the act of the lessee: 2 Black. Com. 124; contrà, Oland's Case (1602), 5 Rep. 116 a.

(m) Graves v. Weld (1833), 5 B. & Ad. 105, 118.

(n) 1 Rol. Abr. 728 (A.), 22.

(o) Graves v. Weld, supra.

(p) Co. Litt. 55 b.

(q) Judgment of Bayley, J., in Evans v. Roberts (1826), 5 B. & C.

p. 832; Haines v. Welch (1868), L. R. 4 C. P. 91.

(r) Graves v. Weld (1833), 5 B. & Ad. p. 119; Latham v. Atwood (1636), Cro. Car. 515. In Kingsbury v. Collins (1827), 4 Bing. 202, tearles were allowed to be emblements, but the present point was not raised.

(s) 2 Black. Com. 123; Co. Litt. 55 b. (t) Co. Litt. s. 68; Kingsbury v. Collins (1827), 4 Bing. 202. See Hayling v. Okey (1853), 8 Ex. 531. 545.

(u) Co. Litt. 56 a.

(x) Co. Litt. 55 b.

(y) Kingsbury v. Collins (1827), 4 Bing. 202. an uncertain interest, the right to continue the tenancy for the remainder of the current year has been substituted for the right to emblements by the first section of the Landlord and Tenant Act, 1851(z).

SECT. III.—AWAY-GOING CROPS AND NON-STATUTORY COMPENSATION FOR TILLAGES, ETC.

In the case of tenancies for a fixed term the common law rule Tenant right. is that the tenant must, at the end of the term, give up possession of the farm with all crops then growing and the benefit of all improvements which he has made (a); but in order to induce the tenant to cultivate the land properly, and especially during the last year of the tenancy, the rule is frequently excluded either by express stipulation (b) or by the custom of the country. With respect to away-going crops, such a custom may be either that the outgoing tenant shall be permitted, after he has quitted the farm, to reap all or part of the crops he has sown (c); or that he shall receive payment for the crops from the incoming tenant or the landlord. With respect to the management of the farm during the last year, the custom may be that the tenant shall be entitled on quitting to compensation for seeds and tillage and fallows which are not then exhausted (d). Where the away-going crops are limited to a specific proportion of the demised land, the tenant sows any excess for the benefit of the landlord or the incoming tenant (e); unless, indeed, the sowing has been authorized by the landlord (f). It is not an unreasonable custom that the tenant, on quitting the farm, should be entitled to charge his landlord with a certain portion of the expense of necessary drainage of the farm done without the landlord's consent or

⁽z) 14 & 15 Vict. c. 25. As to the construction of sect. 1 of this Act, see Haines v. Welch (1868), L. R. 4 C. P. 91.

⁽a) Caldecott v. Smythies (1837), 7 C. & P. 808.

⁽b) Where a lease for twenty-one years gave the lessee a right to compensation "at the end of the term," and there was an option to determine the lease at the end of seven years, the lessee upon determining the lease at the seven years was held to be entitled to compensation: Bevan v. Chambers (1896), 12 T. L. R. 417.

⁽c) Wigglesworth v. Dallison (1779),

¹ Doug. 201; 1 Smith's L. C. 11th ed. 545.

⁽d) See Senior v. Armytage (1816), Holt, N. P. 197; Dalby v. Hirst (1819), 1 Br. & B. 224; Hutton v. Warren (1836) 1 M. & W. 466. As to express agreements with respect to tillages and improvements, see Whittaker v. Barker (1832), 1 Cr. & M. 113; Newson v. Smythies (1858), 3 H. & N. 840; Brocklington v. Saunders (1864), 13 W. R. 46.

⁽e) Caldecott v. Smythies (1837), 7 C. & P. 808.

⁽f) Griffiths v. Tombs (1833), 7 C. & P. 810.

knowledge, such drainage being according to the rules of good husbandry (g). The tenant's claim to compensation for tillage is so favourably viewed that where he does the necessary ploughing and sows the land in the ordinary and proper course of husbandry, and leaves manure for the benefit of the landlord, who accepts and uses it, the law, even where there is no custom, will imply an agreement to pay the value (h), and the tenant does not lose his right by holding over (h).

Custom.

Where there is a custom of the country regulating any of the above matters, and the lease contains no stipulations which are inconsistent with it, the custom will be considered as engrafted upon the lease, and forming part of it, as fully as if it were expressly stated (i). A custom for this purpose is not a custom strictly so called, and need not be immemorial. It is sufficient if it is the usage or general practice of the neighbourhood (k); but the practice of a particular estate is not supposed to be matter of notoriety, and has not the same effect (l).

Exclusion of custom.

It was said in Senior v. Armytage (m) that the custom was operative provided the written agreement did not in express terms exclude it; but the custom may also be excluded by implication, and for this purpose it is sufficient if there is any term of the lease necessarily repugnant to or inconsistent with the custom (n). Thus a custom for the tenant to have the away-going crops is excluded if the lease expressly makes other provision in respect of such crops (o); and it is equally excluded if the tenant holds after the expiration of the lease as yearly tenant without coming to a fresh agreement (o).

But a stipulation giving compensation for certain matters does not exclude a custom giving compensation for matters substantially different (p); and a stipulation as to deductions of one kind from the value of the away-going crop does not exclude a

⁽g) Mousley v. Ludlam (1851), 21 L. J. Q. B. 64.

⁽h) Martin v. Coulman (1834), 4 L. J. K. B. 37.

⁽i) Hutton v. Warren (1836), 1 M. & W. 466; Wigglesworth v. Dallison (1779), 1 Doug. 201; 1 Sm. L. C. 11th ed. 545.

⁽k) Dalby v. Hirst (1819), 1 Br. & B. 224, pp. 228, 230.

⁽l) Womersley v. Dally (1857), 26 L. J. Ex. 219.

⁽m) (1816), Holt, N. P. 197.

⁽n) Holding v. Pigott (1831), 7

Bing. 465, at p. 474.

⁽o) Boraston v. Green (1812), 16 East, 71. See, too, Webb v. Plumer (1819), 2 B. & A. 746; Roberts v. Barker (1833), 1 Cr. & M. 808; Clarke v. Roystone (1845), 13 M. & W. 752; Clarke v. Westrope (1856), 18 C. B. 765.

⁽p) Hutton v. Warren (1836), 1 M. & W. 466.

custom as to deductions of another kind (q). If the lease contains no stipulation as to the terms of quitting, an outgoing tenant may be entitled to his away-going crop according to the custom of the country, although the stipulations applicable to the period of holding by the tenant may be inconsistent with such a custom (r).

It has been said that the tenancy still continues as to the land Possession on which the away-going crop is growing (s); or that the outgoing tenant remains in possession until all is done which he crops. has a right to do in respect of the crop (t). But where the tenant is to leave the crop to the landlord or the incoming tenant at a valuation, he has no right of possession so as to exclude the landlord, but at most a right to go on the land for the purposes of the crop until the valuation is made (u).

for purpose of away-going

Tenant right only arises at the expiration of the lease and on Incidents of the substantial performance of the covenants, and upon abandoning his tenancy during the term the tenant forfeits his tenant right (x). He will also forfeit it by accepting a new tenant right under a fresh lease, but not by taking a new lease which is silent about compensation (y).

tenant right.

Tenant right is assignable, and passes under an assignment of "all the estate and interest" of the outgoing tenant in the farm (z). And an agreement by the tenant to pay interest on a valuation at entry, and to leave an equal valuation on quitting, enures for the benefit of the landlord for the time being (a). An action to recover compensation for tenant right enforces an "obligation affecting land" within R. S. C. Ord. 16, r. 1 (a),

(q) Re Constable and Cranswick's Arbitration (1899), 80 L. T. 164.

p. 474. See, too, Muncey v. Dennis (1856), 1 H. & N. 216.

(s) Boraston ∇ . Green (1812), 16 East, p. 81.

(t) Griffiths v. Puleston (1844), 13 M. & W. p. 360. See, too, Beavan v. Delahay (1788), 1 H. Bl. 5; Re Powers (1890), 63 L. T. 626. So by special stipulation the lessor or the incoming tenant may have the right to enter and plough before the termination of the notice to quit: Milner v. Jordan (1846), 8 Q. B. 615. See Petrie v. Daniel, 1 Smith, 199.

(u) $Strickland \ \forall$. Maxwell (1834), 2 Cr. & M. 539. As to an outgone tenant's right of on-stand upon his

late farm for manure left there, pursuant to a covenant in the lease, in (r) Holding v. Pigott, supra, at order to be sold to the incoming tenant, see Beaty v. Gibbons, 16 East, 116; 14 R. R. 320.

(x) England v. Shearburn (1884), 52 I. T. 22. See Thorpe v. Eyre (1834), 1 A. & E. 926. As to observance of covenants being under the terms of the lease a condition precedent to the enjoyment of outgoing rights, see Strickland v. Maxwell (1834), 2 Cr. & M. 539.

(y) Lane v. Moeder (1885), C. & E. **548.**

(z) Cary v. Cary (1862), 10 W. R. 669.

(a) Wagstuff v. Clinton (1883), C. & E. 45.

and an order can be made for service of the writ out of the jurisdiction (b).

Compensation
—by whom
payable.

Primâ facie the landlord is bound to pay the outgoing tenant for tillages, and the incoming tenant does not render himself liable to do so by the mere fact of entering upon the land, unless a new contract has been entered into with him (c). Where there is a custom that the incoming tenant shall pay for the fallows, and shall be repaid upon his leaving the premises, there is an implied contract on the part of the landlord that, if there be no incoming tenant, the landlord will pay the outgoing tenant according to the custom (d). And, generally, where there is no incoming tenant, any payment due by custom to the outgoing tenant must be borne by the landlord (d). Valuation is not a condition precedent to payment, unless made so by the terms of the lease, and the tenant can recover against the landlord on a quantum meruit (e).

SECT. IV.—STATUTORY COMPENSATION FOR IMPROVEMENTS.

Statutes relating to compensation for improvements.

The existing statutory provisions relative to tenants' compensation for improvements are contained in a patchwork of five Acts of Parliament, namely, the Agricultural Holdings (England) Acts, 1883 to 1900,—an expression which comprises the Agricultural Holdings (England) Act, 1883(f), the Tenants' Compensation Act, 1890(g), the Market Gardeners' Compensation Act, 1895(h), and the Agricultural Holdings Act, 1900(i), and also the Allotments and Cottage Gardens Compensation for Crops Act, 1887(k).

- (b) Kaye v. Sutherland (1887) 20 Q. B. D. 147.
- (c) Codd v. Brown (1867), 15 L. T. 536; Suckemith v. Wilson (1866), 4 F. & F. 1083.
- (d) Faviell v. Gaskoin (1852), 7 Ex. 273. See Stafford v. Gardner (1872), L. R. 7 C. P. 242. And a custom throwing liability on the incoming tenant is bad: Bradburn v. Foley (1878), 3 C. P. D. 129.

(e) Sucksmith v. Wilson (1866), 4 F. & F. 1083; Clarke v. Westrope

(1856), 18 C. B. 765.

- (f) 46 & 47 Vict. c. 61. This Act, which came into force (sect. 53) on the 1st January, 1884, repealed (by
- sect. 62) the Agricultural Holdings Act, 1875 (38 & 39 Vict. c. 92). except as to rights already acquired, or improvements under that Act by tenants holding under tenancies current on the 1st January, 1884.

(g) 53 & 54 Vict. c, 57. Royal assent, 18th August, 1890.

- (h) 58 & 59 Vict. c. 27. This Act came into operation (sect. 2) on the 1st January, 1896.
- (i) 63 & 64 Vict. c. 50. This Act came into operation (sect. 13) on the 1st January, 1901.

(k) 50 & 51 Vict. c. 26. This Act came into force (sect. 3) on the 1st January, 1888.

THE AGRICULTURAL HOLDINGS ACTS OF 1883 AND 1900.

The Act of 1883, and that of 1900 (which is to be construed as one with the earlier Act (l), and amended it in numerous and important respects) apply to certain classes of holdings only, namely, to holdings which are either wholly agricultural or wholly pastoral, or in part agricultural and as to the residue pastoral, or in whole or in part cultivated as a market garden (m); and, further, even a holding which satisfies one or other of the foregoing descriptions is excluded from the operation of the Act if it is let to the tenant during his continuance in any office, appointment, or employment held under the landlord (n).

To what holdings the Acts of 1883 and 1900 apply.

In the Acts of 1883 and 1900 (which, in this Section, will some generally be referred to by the expression "the Acts") a "holding" means any parcel of land held by a tenant; a "contract of tenancy" means a letting of or agreement for the letting of land for a term of years, or for lives, or for lives and years, or from year to year (o); and the expression "determination of tenancy" means the cesser of a contract of tenancy by reason of effluxion of time, or from any other cause (p). But the abandonment of a farm by the tenant on the ground of the landlord's breach of an obligation to fence is not a determination of the tenancy within the meaning of the statutory definition (q).

Where a tenant (r) has made on his holding any improvement comprised in the first schedule to the Act of 1900, he is, subject to the conditions prescribed by that Act and the Act of 1883, for improve-

(I) Act of 1890, s. 9 (2). (m) See infra, p. 563.

- (n) Act of 1883, s. 54. Where land held with a cottage had been cultivated with a plough, the Act of 1883 was held to apply: Godfrey v. Jacobs (1886), 30 Sol. Journ. 539 (March County Court). But secus where a shop and grass land were let together: Morley v. Jones (1888), 32 Sol. Journ. 630 (Gainsborough County Court).
- (o) An agreement for a tenancy at a yearly rent, with a special term making it determinable at any time by a three months' notice, may be within the Acts. See King v. Eversfield, [1897] 2 Q. B. 475, 480.
- (p) Act of 1883, s. 61. As to cases where part of a holding is resumed by a landlord for improve-

ment purposes, under sect. 41 of the Act, see supra, p. 474.

- (q) See Todd v. Bowie (1902), 4 F. 435, a case decided on the construction of the corresponding (42nd) section of the Agricultural Holdings (Scotland) Act, 1883. The Court of Session held, in that case, that the landlord's breach did not entitle the tenant to terminate the contract of lease.
- (r) In the Acts, "tenant" means the holder of land under a landlord for a term of years, or for lives, or for lives and years, or from year to year, and includes the executors, administrators, assigns, legatee, devisee, or next of kin, husband, guardian, committee of the estate, or trustee in bankruptcy of a tenant, or any person deriving title from a

Right of tenant to compensation ments. Act of 1900 s. 1 (1).

entitled at the determination of his tenancy, on quitting his holding (s), to obtain from the landlord (t), as compensation under the Acts for the improvement, such sum as fairly represents the value of the improvement to an incoming tenant; but, in estimating the value of any such improvement, there is not to be taken into account, as part of the improvement made by the tenant, what is justly due to the inherent capabilities of the soil (u).

Improvements specified in first schedule to Act of 1900. The first schedule to the Act of 1900 is divided into three parts, and is as follows:—

"PART I.

Improvements to which consent of landlord is required.

- (1) Erection, alteration, or enlargement of buildings.
- (2) Formation of silos.
- (3) Laying down of permanent pasture.
- (4) Making and planting of osier-beds.
- (5) Making of water meadows or works of irrigation.
- (6) Making of gardens (x).
- (7) Making or improvement of roads or bridges.
- (8) Making or improving of watercourses, ponds, wells, or reservoirs, or of works for the application of water power or for supply of water for agricultural or domestic purposes.
 - (9) Making or removal of permanent fences.
 - (10) Planting of hops.
 - (11) Planting of orchards (y) or fruit bushes.
 - (12) Protecting young fruit trees.
 - (13) Reclaiming of waste land.
 - (14) Warping (z) or weiring of land.

tenant; and the right to receive compensation under the Acts in respect of any improvement made by a tenant enures to the benefit of such executors, administrators, assigns, and other persons as aforesaid (Act of 1883, s. 61).

(s) Note that these two events—determination of tenancy and quitting—must be concurrent, in order that a claim for statutory compensation, which must generally be made before the tenancy determines (infra, p. 545), may arise.

(t) In the Acts, "landlord," in relation to a holding, means any person for the time being entitled to

receive the rents and profits of the holding (Act of 1883, s. 61).

(u) Act of 1900, s. 1 (1).

(x) As to market gardens, see the Act of 1883, s. 54, supra, p. 537, and the Market Gardeners' Compensation Act, 1895, s. 3 (4), (5), infra, p. 562.

(y) Mears v. Callender, [1901] 2

Ch. 388.

(z) "This is a mode of fertilizing land by means of the warp or deposit of mud let in upon it by the action of tidal rivers through artificial banks and channels": Lely and Aggs on Agricultural Holdings, p. 111.

- (15) Embankments and sluices against floods.
- (16) The erection of wirework in hop gardens.
- [N.B.—This part is subject, as to market gardens, to the provision of Part III.]

PART II.

Improvements in respect of which notice to landlord is required.

(17) Drainage.

PART III.

Improvements in respect of which consent of or notice to landlord is not required.

- (18) Chalking of land.
- (19) Clay-burning.
- (20) Claying of land or spreading blaes (a) upon land.
- (21) Liming of land.
- (22) Marling of land.
- (23) Application to land of purchased artificial or other purchased manure (b).
- (24) Consumption on the holding by cattle, sheep, pigs, or by horses other than those regularly employed on the holding, of corn, cake, or other feeding stuff not produced on the holding.
- (25) Consumption on the holding by cattle, sheep, or pigs, or by horses other than those regularly employed on the holding, of corn proved by satisfactory evidence to have been produced and consumed on the holding.
- (26) Laying down temporary pasture with clover, grass, lucerne, sainfoin, or other seeds, sown more than two years prior to the determination of the tenancy.
- (27) In the case of a holding as to which section three (c) of the Market Gardeners' Compensation Act, 1895, applies—
 - (i) Planting of standard or other fruit trees permanently set out;
 - (ii) Planting of fruit bushes permanently set out;
 - (iii) Planting of strawberry plants;
 - (iv) Planting of asparagus, rhubarb, and other vegetable crops which continue productive for two or more years;
 - (v) Erection or employment of buildings for the purpose of the trade or business of a market gardener."
- (a) "Blaes" is the Scots term for pieces of blue slate: Lely and Aggs on Agricultural Holdings, p. 112.
- (b) See Brunskill v. Atkinson (1884), 29 Sol. Journ. 29 (Kendal County Court).
 - (c) See infra, p. 562.

Compensation under Part 1. of first schedule to Act of 1900. Compensation (d) under the Acts is not payable in respect of any improvement mentioned in Part I. of the above schedule unless the landlord, or his agent duly authorized in that behalf, has, previously to the execution of the improvement, consented in writing (e) to the making of such improvement (f). Any such consent may be given by the landlord unconditionally, or upon such terms, as to compensation or otherwise, as may be agreed upon between the landlord and the tenant; and in the event of any agreement being made between the landlord and the tenant, any compensation payable thereunder is to be deemed to be substituted for compensation under the Acts (g).

Compensation under Part II. of first schedule to Act of 1900. Compensation (d) under the Acts is not payable in respect of any improvement mentioned in Part II. of the same schedule—i.e., any drainage improvement—unless the tenant has, not more than three months (h) and not less than two months (h) before beginning to execute such improvement, given to the landlord, or his agent duly authorized in that behalf, notice in writing (i) of his intention so to do, and of the manner in which he proposes to do the intended work. Upon such notice being given—(1) the landlord and the tenant may agree on the terms as to compensation or otherwise on which the improvement is to be executed,

- (d) I.e., for improvements executed subsequently to the 1st January, 1884, the date of the commencement of the Act of 1883. Provisions (which by lapse of time have now become practically unimportant) with respect to compensation for improvements executed before the commencement of the Act of 1883 were made by sect. 2 of that Act.
- (e) See Mears v. Callender, [1901] 2 Ch. 388, where the requisite consent to the planting of an orchard was held to have been given by the lease itself, and the tenant was accordingly held to be entitled to compensation for the orchard trees.
- (f) The consent may be in the following form:—
 To Mr. C. D.

I do hereby consent to the execution by you, at your own cost and expense, of the following improvements upon the premises now held by you as my tenant:—

Erection of [buildings as specified, or execution of other improvements

- mentioned in Part I.]
 Dated the —— day of ——, 19—.
 E. F.
 - (g) Act of 1883, s. 3.
- (h) I.e., calendar months. See the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 3, and Migotti v. Colvill (1879), 4 C. P. D. at pp. 235, 237.
- (i) As to service of notices, &c., under the Acts, see sect. 28 of the Act of 1883, printed supra, p. 477. Notice to the landlord's estate agent is prima facie sufficient: Ingham v. Fenton (1893), 10 T. L. R. 113. The notice may be as follows:—
 To Mr. E. F.

I hereby give you notice that I intend, after the lapse of two months from your receipt of this notice, to execute the following drainage works [describe the proposed works in detail]; and I propose to execute the said works in the following manner [describe in detail the manner].

Dated the —— day of ——, 19—. C. D.

and, in the event of any such agreement being made, any compensation payable thereunder is to be deemed to be substituted for compensation under the Acts; or (2) the landlord may, unless the notice of the tenant is previously withdrawn, undertake to execute the improvement himself, and may execute the same in any reasonable and proper manner which he thinks fit, and charge the tenant with a sum not exceeding 5l. per cent. per annum on the outlay incurred in executing the improvement, or not exceeding such annual sum, payable for a period of twenty-five years, as will repay such outlay in that period, with interest at 3l. per cent. per annum, such annual sum to be recoverable as rent; or (3) in default of any such agreement or undertaking, and also in the event of the landlord failing to comply with his undertaking within a reasonable time, the tenant may execute the improvement himself, and will in respect of it be entitled to compensation under the Acts (k). The landlord and the tenant may, however, dispense with any notice under this section (sect. 4), and may come to an agreement in a lease or otherwise between themselves in the same manner and as validly as if notice had been given (k).

Where, in the case of a tenancy under a contract of tenancy beginning after the commencement of the Act of 1883—i.e., after the 1st January, 1884—there is a "particular agreement in ments under writing" (l), which secures to the tenant, in respect of any first schedule improvement mentioned in Part III. of the first schedule to the Act of 1900 and executed after the commencement of the Act of 1883, fair and reasonable compensation, having regard to the circumstances existing at the time of making the agreement, there the compensation in respect of such improvement is payable in pursuance of the particular agreement, and is to be deemed to be substituted for compensation under the Acts (m).

In the ascertainment of the amount of the statutory compensation payable to a tenant, there is to be taken into account (n)any benefit which the landlord has given or allowed to the tenant ascertaining in consideration of the tenant executing the improvement. in ascertaining the amount of such compensation payable in

Substituted compensation for improve-Part III. of to Act of 1900.

Matters to be taken into account in compensation. Act of 1900, s. 1 (3) (4).

(k) Act of 1883, s. 4.

(m) Act of 1883, s. 5. This section also made provisions (now practically spent) for the case of tenancies current at the commencement of the Act of 1883, as to which see, too, sect. 61 of that Act, and Smith v. Acock (1885), 53 L. T. 230.

(n) Sc., in favour of the landlord.

⁽l) I.e., an agreement of a precise and definite character: Lely and Aggs, Agricultural Holdings, p. 48.

respect of manures as defined by the Act of 1900 (o), there is to be taken into account (p) the value of the manure required by the contract of tenancy, or by custom (q), to be returned to the holding in respect of any crops sold off or removed from the holding within the last two years of the tenancy or other less time for which the tenancy has endured, not exceeding the value of the manure which would have been produced by the consumption on the holding of the crops so sold off or removed (r).

Compensation outside the Acts.

It is apparent from what has already been stated that, to a very considerable extent, the Acts of 1883 and 1900 leave it open to landlords and tenants to substitute agreements of their own making, with respect to compensation for improvements, for the compensation provided by the Acts in cases where there is no such agreement. And the statutory provisions for compensation made, as already mentioned, by the first section of the Act of 1900 do not prejudice the right of a tenant to claim any compensation to which he may be entitled under custom (s), agreement, or otherwise, in lieu of any compensation provided by that section (t).

Avoidance of agreements inconsistent with the Acts. Act of 1883, s. 55.

It is, however, expressly enacted that any contract, agreement, or covenant made by a tenant, by virtue of which he is deprived of his right to claim compensation under the Acts in respect of any improvement mentioned in the above-mentioned first schedule to the Act of 1900 (except an agreement providing such compensation as is by the Acts permitted to be substituted for compensation under the Acts) shall, in so far as it deprives him of such right, be void both at law and in equity (u).

Payment by incoming to outgoing tenant.

Where an incoming tenant has, with the consent in writing of his landlord (v), paid to the outgoing tenant compensation under

(a) By sect. 9 (1) of the Act of 1890, references to "manures" in that Act, and in the Act of 1883, are to be construed as references to the improvements numbered (23), (24), and (25) in Part III. of the first schedule to the Act of 1900. That schedule is printed supra, p. 538.

(p) Sc., in favour of the landlord.
(q) As to custom, see supra, p. 534.

(r) Act of 1900, s. 1 (3), (4).

(s) As to custom, see supra, p. 534.

(t) Act of 1900, s. 1 (5). This sub-section replaces sect. 57 of the Act of 1883 (which section was repealed by sect. 12 of the Act of 1900),

and may have been suggested by the discussions of the repealed section which took place in Newby v. Eckersley, [1899] 1 Q. B. 465, and in Re Pearson and I'Anson, [1899] 2 Q. B. 618.

(u) Act of 1883, s. 55.

(v) In its application to market gardens, this section is to be read and construed as if the words "with the consent in writing of his landlord" were not included therein: Market Gardeners' Compensation Act, 1895, s. 3 (4). Accordingly an incoming tenant of a market garden may, on quitting, claim compensation

the Acts in respect of any improvement, such incoming tenant is entitled, on quitting, to compensation in respect of such improvement in like manner, if at all (x), as the outgoing tenant would have been entitled, if he had remained tenant and quitted the holding at the time at which the incoming tenant quits it (y).

A tenant who has remained in his holding during a change or Changes of changes of tenancy, by renewal, for instance, of his lease, or by service and subsequent waiver of a notice to quit (z), does not, on afterwards quitting his holding at the determination of a tenancy, lose his right to claim compensation in respect of improvements by reason only that they were made during a former tenancy or tenancies, and not during the particular tenancy at the determination of which he is quitting (a).

Tenants holding from year to year, and also tenants holding Improveas lessees for a term of years, are subject to an important restric- in last year tion in respect of compensation for improvements other than manures, as defined by the Act of 1900—that is to say, Nos. (23), (24), and (25) in the first schedule to that Act (b). A tenant from year to year has no claim to compensation under the Acts for improvements begun by him within one year before he quits his holding, or at any time after he has given or received final notice to quit; and a tenant holding as a lessee for years has no claim for improvements begun within one year before the expiration of his lease. A final notice to quit means a notice which has not been waived or withdrawn, but has resulted in the tenant quitting his holding. But the restriction does not apply where a tenant from year to year has begun the improvement during the last year of his tenancy, and then receives notice to quit, in pursuance of which he quits at the end of that year; or where a tenant, whether from year to year or as lessee, previously to beginning the improvement has served on his landlord notice of his intention to begin it, and the landlord has either assented or has failed for a month after the receipt of the notice to object to

for the unexhausted value (if any) of improvements purchased by him from the outgoing tenant, whether the landlord consented to the purchase or not.

the making of the improvement (c).

(x) For it may be that the value to the holding of the improvements paid for by the incoming tenant will have been wholly exhausted by the time when he quits.

- (y) Act of 1883, s. 56.
- (z) See *supra*, p. 480.
- (a) Act of 1883, s. 58.
- (b) Act of 1883, s. 59; Act of 1900, s. 1 (2) and s. 9. The schedule is printed supra, p. 538.
- (c) Act of 1883, s. 59. In this section the word "tenant" means

tenancy.

ments made of tenancy.

Arbitration procedure under Act of 1900.

The Act of 1900 introduced a new system of procedure upon disputed claims for compensation. It enacts (d) that, if a tenant claims to be entitled to compensation, whether under the Act of 1883 or that of 1900, or under custom (e), agreement, or otherwise, in respect of any improvement comprised in the first schedule (f) to the Act of 1900, and if the landlord and tenant fail to agree as to the amount and time and mode of payment of such compensation, the difference shall be settled by arbitration (g) in accordance with the provisions, if any, in that behalf in any agreement between the landlord and the tenant, and, in default of and subject to any such provisions, by arbitration under the Act of 1900, in accordance with certain rules (h) which are set out in the second schedule to that Act.

Mode of arbitration optional.

Inasmuch as the Act expressly authorizes the settlement of differences about compensation by arbitration in accordance with the provisions in that behalf of any agreement between landlord and tenant, it follows that a landlord and his tenant are free to make, either in and by the lease or other contract of tenancy, or by a separate agreement, any submission to or other arrangement respecting arbitration which they may think fit. They may, for instance, agree upon a submission including all the provisions set forth in the first schedule to the Arbitration Act, 1889, so far as they are applicable to the reference under the submission (i). And where an arbitration takes place under that Act, instead of under the Act of 1900, the proceedings will be under the control (not of the local county court, but) of the High Court, and the award will be enforceable in the manner prescribed by the Act of 1889 (k). But, in the absence of any agreement between

"tenant claiming compensation under this Act": per Kennedy, J., in Re Peurson and I'Anson, [1899] 2 Q. B. at p. 631.

(d) Act of 1900, s. 2. The compensation procedure prescribed by the Act of 1883 was entirely abolished by the Act of 1900, which repealed the sections of the earlier Act relating to such procedure.

(e) As to custom, see supra, p. 534. (f) This schedule is printed

supra, p. 538.

(g) Note that a landlord is left free to sue his tenant, for rent, for instance, or damages for waste, or breach of covenant; but a tenant's only remedy, in cases of disputed compensation, is arbitration. He cannot even, if sued by his landlord, put in a counterclaim for compensation. See Gas Light and Coke Co. v. Holloway (1885), 52 L. T. 434; Schofield v. Hincks (1888), 58 L. J. Q. B. 147.

(h) As to these rules, see infra, p. 548.

(i) 52 & 53 Vict. c. 49, s. 2.

(k) I.e., by leave of the High Court or a Judge, in the same manner as a judgment or order to the same effect: Arbitration Act, 1889, s. 12. See Re Lloyd and Tooth, [1899] 1 Q. B. 559, 563, 564, and cf. Shrubb v. Lee (1888), 59 L. T. 376.

landlord and tenant to have the arbitration governed by the Act of 1889, the provisions of that Act will have no application to the statutory procedure under the Act of 1900 (l).

Where proceedings are taken under or in pursuance of the The designa-Acts of 1883 and 1900 in respect of compensation for improvements, or under any agreement made in pursuance of the Acts, "the designations of landlord and tenant shall continue to apply to the parties" until the conclusion of the proceedings (m). This enactment, as construed by the Court of Appeal (n), enables the executors of a landlord, who after his death have paid compensation claimed in his lifetime by an outgoing tenant, to obtain a charge upon the holding (o) in respect of the amount so paid, notwithstanding that, primâ facie, the meaning of the word "landlord" as defined in the Acts (p) may be said to shut out the executors of a deceased landlord (n).

tions of landlord and

The proceedings in an arbitration under the Act of 1900 fall, Jurisdiction as will presently appear, in part under the jurisdiction and control of the Board of Agriculture, and in part under the jurisdiction and control of the local county court, that is to say, of "the county court within the district whereof the holding or the larger part thereof is situate "(q).

over arbitration under Act of 1900,

A tenant claiming to be entitled to statutory compensation in Time for respect of any improvement comprised in the first schedule to the Act of 1900 must make his claim before the determination of his tenancy; except that, where the claim relates to an improvement executed after the determination of the tenancy, but while the tenant lawfully remains in occupation of part of the holding, the claim may be made at any time before the tenant quits that part (r). This provision, newly introduced by the Act of 1900, in effect gives to a tenant two months more time within which to make his claim than he had under the Act of 1883, which

claiming compensation.

(m) Act of 1883, s. 61.

(p) The definition referred to in the text is stated supra, p. 538.

(q) The words quoted in the text are those of the definition, in sect. 61 of the Act of 1883, of the expression "county court," as used in the Acts

of 1883 and 1900 (and also in the text) in relation to the holdings to which those Acts apply. It is to be noted that the Act of 1883 expressly provides (by sect. 48) that "an order of the county court, or of a court of summary jurisdiction under the Act, shall not be quashed for want of form, or be removed by certiorari or otherwise into any superior court."

(r) Act of 1900, s. 2 (2).

⁽l) See sect. 2 (8) of the Act of 1900, infra, p. 548.

⁽n) See Gough v. Gough, [1891]'2 Q. B. 665, 674, 679.

⁽o) Act of 1883, s. 29, infra, p. 554.

required (s) notice of a tenant's claim to be given at least two months before the determination of his tenancy. Even where the part of his holding of which the tenant lawfully remains in occupation consists of buildings without any agricultural or pastoral land, it is conceived that an improvement executed on that part of the holding during such occupation may now (t) form the subject of a claim for compensation.

Form of claim.

No form (u) is prescribed by the Act of 1900 for a tenant's claim of compensation. It is not even required to be in writing. In practice, however, it is obviously desirable, from both parties' points of view, that such a claim should be sent to the landlord, or to his local or other agent authorized to receive such claims (x), in writing signed by the tenant, and dated (y), and containing reasonably explicit particulars (z) of the improvements in respect of which the claim is made.

Bringing other claims into the arbitration.

Where any claim by a tenant for compensation in respect of any improvement comprised in the first schedule to the Act of 1900 is referred to arbitration, and any sum is claimed to be due to the tenant from the landlord in respect of any breach of contract or otherwise in respect of the holding, or to the landlord from the tenant in respect of any waste (a) wrongfully committed or permitted by the tenant, or in respect of breach of contract or otherwise in respect of the holding, the party claiming such sum may, if he thinks fit, by written notice (b) to the other party, given by registered letter or otherwise, not later than seven days after the appointment of the arbitrator or arbitrators, require that the arbitration shall extend to the determination of the

(s) Sc., in sect. 7, which was repealed by the Act of 1900. See determination of the tenancy, or, Re Paul (1889), 25 Q. B. D. 247, and the Scottish case of Black v. Clay, [1894] A. C. 368.

(t) Distinguish Morley v. Carter, [1898] 1 Q. B. 8, a decision upon the repealed sect. 7 of the Act of 1883.

- (u) A suggested form of claim is given in Lely and Aggs on Agricultural Holdings, at p. 548. The same volume also contains many other forms for use in connection with the Agric. Hold. Acts, 1883 to 1900.
- (x) See Ingham v. Fenton (1883), 10 T. L. R. 113.
 - (y) As already stated in the text,

the claim must be sent before the as regards any improvement subsequently executed while the tenant lawfully remains in occupation of a part of the holding, before he quits that part: Act of 1900, a. 2 (2).

(z) Note the matters to be considered by an arbitrator, in awarding costs, under rule 15 in Part I. of the second schedule to the Act of 1900, q.v., infra, p. 550.

(a) As to waste, see supra, pp. 348

et seq. (b) A suggested form of notice of a landlord's claim against a tenant is given in Lely and Aggs on Agricultural Holdings, at p. 549.

further claim, and thereupon the provisions of sect. 2 of the Act of 1900 with respect to arbitration will apply accordingly, and any sum awarded to be paid by landlord or tenant will be recoverable (c) in the manner provided by the Act of 1883 (d) for the recovery of compensation (e).

Where any claim which is referred to arbitration relates to an Separate improvement executed or matter arising after the determination of a tenancy, but while the tenant lawfully remains in occupation of part of the holding (f), the arbitrator may, if he thinks fit, make a separate award in respect of such claim (q).

award.

Every arbitration under the Acts takes place before a single Arbitration Accordingly, before one arbitrator. arbitrator, unless the parties otherwise agree (h). either party can, merely by abstaining from agreeing to any other course, ensure having the matter referred to one arbitrator, unless, indeed, it has previously been—as it may be—"otherwise agreed" in the lease or other contract of tenancy. Where the arbitration is to take place under the second schedule to the Act of 1900, any agreement between the parties, providing for there being more than one arbitrator, must be in writing (i).

If, in any arbitration under the Act of 1900, the arbitrator Opinion of states a case (k) for the opinion of the county court on any county on case question of law, the opinion of the court on any question so stated. stated will be final, unless within the time prescribed by Rules of the Supreme Court either party appeals to the Court of Appeal, from whose decision no appeal will lie (l).

The County Court Rules, 1903, provide for applications to a county court Judge for an order directing an arbitrator to state a case, and for the form of, and proceedings upon, a case stated either in pursuance of such a direction, or on the arbitrator's own motion (m). And provisions respecting appeals

(c) This provision gets over some difficulties which arose in connection with the compensation procedure under the Act of 1883. See Re Holmes and Formby, [1895] 1 Q. B. 174; and Farquharson v. Morgan, [1894] 1 Q. B. 552.

(d) I.e., by sect. 24 of that Act, stated infra, p. 553.

(e) Act of 1900, s. 2 (3).

(f) See sub-sect. (2) of sect. 2 of the Act of 1900.

(g) Act of 1900, s. 2 (4). As to the form of an award, see rule 10 in Part I. of the second schedule to that Act, infra, p. 549.

(h) Act of 1900, s. 2 (5).

(i) This is in effect prescribed by the first rule in Part II. of the second schedule to the Act of 1900.

(k) The statement of a case by an arbitrator is dealt with by the ninth rule in Part I. of the second schedule to the Act of 1900, infra, p. 549.

(l) Act of 1900, s. 2 (6).

(m) County Court Rules, 1903, Ord. 40, rr. 2, 3.

from decisions of county court Judges to the Court of Appeal have been made by Ord. 58, r. 20, of the Rules of the Supreme Court (n).

False evidence in an arbitration

Any person who wilfully and corruptly gives false evidence before an arbitrator or umpire in any arbitration under the Act of 1900 is guilty of perjury (o), and may be dealt with, prosecuted, and punished accordingly (p).

Non-applicability of Arbitration Act, 1889.

Subject to any provision contained in any agreement between landlord and tenant, the Arbitration Act, 1889 (q), does not apply to any arbitration to which the Act of 1900 applies (r). This enactment, however, clearly recognizes the right, to which allusion has already been made (s), of landlords and tenants to agree between themselves that any difference between them as to compensation for improvements shall be regulated by the provisions of the Act of 1889, and shall accordingly come under the jurisdiction of the High Court, instead of the county court and the Board of Agriculture.

Second schedule to Act of 1900,

The second schedule to the Act of 1900 contains the rules regulating arbitrations under that Act, and is divided into two parts, Part I. applying to cases of arbitration before a single arbitrator, and Part II. to cases of arbitration before two arbitrators or an umpire.

Rules applying to arbitrations before one arbitrator.

The matters dealt with by the rules in Part I. are as follows:—

- (1) A person agreed upon between the parties, or, in default of agreement, nominated by the Board of Agriculture on the application (t) in writing of either party, is to be appointed arbitrator.
- (2) If a person appointed arbitrator dies, or is incapable of acting, or for seven days after notice from either party requiring

(n) Such an appeal is by notice of motion in accordance with R. S. C. Ord. 59, r. 10.

(o) Perjury is punishable under the Act 2 Geo. 2, c. 25, and the Penal Servitude Act, 1857 (20 & 21 Vict. c. 3), with penal servitude for a period not exceeding seven years.

(p) Act of 1900, s. 2 (7). (q) 52 & 53 Vict. c. 49.

(r) Act of 1900, s. 2 (8).
(s) See supra, p. 544, citing Re
Lloyd and Tooth, [1899] 1 Q. B. 559,
and Shrubb v. Lee (1888), 59 L. T.
376, where it was held that the reference was in fact a common law

reference, and that the award was outside the Act of 1883 altogether, and none the less so because it may have included some matters which were within that Act.

(t) The Board of Agriculture has published a short set of rules, called the Agricultural Holdings (England) Rules of 1900 (dated the 7th December, 1900), which prescribe the form of an award in an arbitration under the Act of 1900, and authorize several forms which may be used for proceedings in such arbitrations. One of these forms is a form of application to the Board under this rule (1).

him to act fails to act, a new arbitrator may be appointed as if no arbitrator had been appointed.

- (3) Neither party can revoke the appointment of the arbitrator without the consent of the other party.
- (4) Every appointment, notice, revocation, and consent under this Part I. must be in writing (u).
- (5) The arbitrator is to make and sign his award within twentyeight days of his appointment, or within such longer period as the Board of Agriculture may (whether the time for making the award has expired or not) direct.
- (6) Where an arbitrator has misconducted (x) himself, the county court may remove him (y).
- (7) The parties to the arbitration, and all persons claiming through them respectively (z), are to submit (subject to any legal objection) to be examined by the arbitrator, on oath or affirmation, in relation to the matters in dispute, and are (subject as above) to produce before the arbitrator all samples, books, deeds, papers, accounts, writings, and documents within their possession or power which may be required or called for, and to do all other things which, during the proceedings, the arbitrator may require.
- (8) The arbitrator has power to administer oaths, and to take the affirmation of parties and witnesses appearing, and witnesses are, if he thinks fit, to be examined on oath or affirmation.
- (9) The arbitrator may at any stage of the proceedings, and must, if so directed by the Judge of a county court (which direction may be given on the application of either party (a)), state in the form of a special case for the opinion of the court any question of law arising in the course of the arbitration.
 - (10) The arbitrator must, on the application of either party,

(u) And it is obviously expedient that every such document should be signed by the parties.

(x) See, too, rule 13, infra, p. 550. What amounts to misconduct on the part of an arbitrator is discussed in Russell on Arbitration, 8th ed. pp. 353 et seq. For an instance of breach of duty amounting to misconduct, see Re Palmer & Co. and Hosken & Co., [1898] 1 Q. B. 131, 137.

(y) The procedure on an application to the county court under this rule is to be found in the County Court Rules, 1903, Ord. 40, r. 4.

(z) It is, however, to be noticed that, in an arbitration under this Act, an arbitrator has no power to compel the attendance of outside witnesses for the purpose of giving evidence, or of producing documents; a power which the High Court can exercise, by virtue of sect. 16 of the Arbitration Act, 1889, in relation to an arbitration regulated by that Act.

(a) See County Court Rules, 1903,

Ord. 40, 17. 2, 3.

specify the amount awarded in respect of any particular improvement or improvements, and the award must fix a day, not sooner than one month (b) nor later than two months after the delivery of the award, for the payment of the money awarded for compensation, costs, or otherwise, and must be in the form (c) prescribed by the Board of Agriculture.

- (11) The arbitrator's award is final, and binding on the parties and the persons claiming under them respectively.
- (12) The arbitrator may correct, in an award, any clerical mistake, or error, arising from any accidental slip or omission.
- (13) In the event of an arbitrator having misconducted (d) himself, or of an arbitration or award having been improperly procured, the county court may set the award aside (e).
- (14) The costs of and incidental to the arbitration and award are in the discretion of the arbitrator: he may direct to and by whom and in what manner these costs, or any part of them, are or is to be paid(f); and the costs are taxable, on the application of either party (g), by the Registrar of the county court, whose taxation is subject to review by the county court Judge (h).
- (15) In awarding costs, the arbitrator is to take into consideration the reasonableness or unreasonableness of either party's claim in respect of amount or otherwise, and any unreasonable demand for, or refusal to supply, particulars, and generally all the circumstances of the case; and he may disallow the costs of any witness whom he considers to have been called unnecessarily, and any other costs which he considers to have been incurred unnecessarily.

(b) Note that "month" means calendar month: Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 3.

(c) This is Form A in the first schedule to the Agricultural Holdings (England) Rules of 1900, issued by the Board of Agriculture, and dated the 7th December, 1900.

(d) See rule (6), supra, and the note there.

(e) The procedure on an application, under this rule, to set aside an award is prescribed by the County Court Rules, 1903, Ord. 40, r. 4.

(f) Under the Act of 1883 a referee or umpire could not order costs to be paid as between solicitor and client (Re Griffiths and Morris, [1895] 1 Q. B. 866); and, notwithstanding

the words "in what manner," it would be unsafe to assume, in the absence of a judicial decision on the point, that a similar inability does not attach to an arbitrator acting under the above rules. See, too, the L.C.'s order, infra, p. 553. Where, however, an arbitration takes place under the Arbitration Act, 1889, the arbitrators or umpire may, by virtue of an express provision in the first schedule to that Act, "award costs to be paid as between solicitor and client."

(g) The procedure on such applications is dealt with by the County Court Rules, 1903, Ord. 40, r. 5.

(h) See County Court Rules, 1903, Ord. 40, r. 6.

(16) Any forms for proceedings in arbitrations under the Act of 1900 which may be prescribed by the Board of Agriculture are, if used, to be sufficient (i).

The matters dealt with by the rules set forth in Part II. of the Rules applysecond schedule to the Act of 1900 (relating to arbitrations before two arbitrators or an umpire) are as follows:-

ing to arbitrations before two arbitrators or

- (1) If the parties agree in writing that there be not a single umpire. arbitrator, each of them is to appoint an arbitrator.
- (2) If, before award, one of two arbitrators dies, or is incapable of acting, or for seven days after notice from either party requiring him to act fails to act, the party appointing him is to appoint another arbitrator.
- (3) Notice of every appointment of an arbitrator by either party is to be given to the other party.
- (4) If for fourteen days after notice by one party to the other to appoint an arbitrator, or another arbitrator, the other party fails to do so, then, on the application of the party giving notice (k), the Board of Agriculture is to appoint a person to be an arbitrator.
- (5) Where two arbitrators are appointed, then (subject to the provisions of these rules) they are, before entering on the reference, to appoint an umpire.
- (6) If, before award, an umpire dies, or is incapable of acting, or for seven days after notice from either party requiring him to act fails to act, the arbitrators may appoint another umpire.
- (7) If for seven days after request from either party the arbitrators fail to appoint an umpire, or another umpire, then, on the application of either party (l) the Board of Agriculture is to appoint a person to be the umpire.
- (8) Neither party can revoke an appointment of an arbitrator without the consent of the other party.
- (9) Every appointment, notice, request, revocation, and consent under this Part II. must be in writing (m).
- (10) The arbitrators are to make and sign their award in writing within twenty-eight days after the appointment of the
- (i) See the note to rule (1), supra, p. 548.
- (k) A form of application (Form F) is given in the schedule to the Agricultural Holdings (England) Rules of 1900, published by the Board of Agriculture.
- (1) A form of application (Form G) is given in the Board's Rules of 1900, already referred to.
- (m) An almost identical provision is made with respect to arbitrations before a single arbitrator by rule (4) in Part I. of this schedule, supra, p. 549.

last appointed of them, or on or before any later day to which the arbitrators, by any writing signed by them, may enlarge the time for making the award, not being more than forty-nine days from the appointment of the last appointed of them (n).

- (11) If the arbitrators have allowed their time or extended time to elapse without making an award, or have delivered to either party, or to the umpire, a notice in writing stating that they cannot agree, the umpire may forthwith enter on the arbitration in lieu of the arbitrators.
- (12) The umpire is to make and sign his award within one month after the original or extended time appointed for making the award of the arbitrators has expired.
- (13) The time for making an award may be extended from time to time by the Board of Agriculture (o), whether the time for making the award has expired or not.
- (14) The provisions of Part I. (p) of these rules as to the removal of an arbitrator, the evidence, the statement of a special case, the award, costs, and forms are to apply to an arbitration in accordance with Part II., as if the expression "arbitrator," whenever used in these provisions, included two arbitrators, or an umpire, as the case may require.

Award in cases of substituted

There may be cases in which, under one or more of the provisions for this purpose contained in the third, fourth, and compensation. fifth sections (q) of the Act of 1883, landlord and tenant have come to an agreement for substituted compensation, and the agreement is one which does not fix the amount of that compensation, but leaves it to be ascertained when the tenant quits. In any such case, if the tenant also makes a claim for statutory compensation and an arbitration ensues, the arbitrator, arbitrators, or umpire dealing with the claim must ascertain, by means of the ordinary statutory procedure, and award the amount of the compensation payable in respect of the improvements which are the subject of the agreement, if and in so far as that amount can, consistently with the terms of the agreement, be so ascertained (r).

> (n) Compare rule 5 of Part I. (supra, p. 549), which does not allow a single arbitrator to enlarge the time of his own motion.

> (o) A form (Form H) of application to the Board for extension of time of making award is given in the

schedule to the Board's Rules of 1900. already referred to.

(p) See supra, pp. 548 et seq.

(q) As to these sections, see supra. pp. 540, 541.

(r) The statement in the text is intended to express what are conceived

Where any money agreed or awarded to be paid for compensation, costs, or otherwise, is not paid within fourteen days after the time when it is agreed or awarded to be paid, it is recoverable, be paid. upon order made by the Judge of the county court, as money ordered by a county court under its ordinary jurisdiction to be paid is recoverable (s). A special form of procedure on applications to a county court Judge for the recovery of money awarded to be paid for compensation, costs, or otherwise is prescribed by the County Court Rules, 1903 (t). But proceedings for recovering money agreed to be paid for compensation, &c., are by action in the county court commenced by plaint and summons in the ordinary way; and particulars of demand must be filed in any such action, stating concisely the nature of the claim, and the relief or order which the plaintiff claims (u).

Recovery of money agreed or awarded to

Cases may occur in which it is requisite for the purposes, or Appointment some of the purposes, of the Acts that a guardian of a landlord or a tenant who is an infant or a person of unsound mind, or that a next friend of a married woman, should be appointed. In such cases the county court (x) may make the appointment, and may, if and as occasion requires, change the guardian or next friend (y).

of guardian or next friend.

The costs of county court proceedings under the Acts are in Costs of the discretion of the county court; and the Lord Chancellor has power to prescribe from time to time a scale of costs for under the those proceedings, and of costs to be taxed by the Registrar of the Court (z).

county court proceedings Acts.

The following scales of costs have, by virtue of the lastmentioned power, been prescribed by the Lord Chancellor, by an order dated the 27th November, 1900:—

"1. Costs of proceedings in the county courts under the said Acts [the Agricultural Holdings (England) Acts, 1883 to 1900] shall be taxed according to such one of the scales of costs

to be the meaning and effect of the unrepealed portion of sect. 17 of the Act of 1883, read in the light of the Act of 1960, which (by sect. 12) repealed a portion of that 17th section.

(8) Act of 1883, s. 24.

(t) County Court Rules, 1903, Org. 40, r. 7.

(u) County Court Rules, 1903, Ord. 40, r. 8. As to the ordinary processes for enforcement of county court judgments and orders, see the same Rules, Ord. 25.

(x) The procedure on applications under the Acts to a county court for the appointment or change of a guardian is prescribed by the County Court Rules, 1903, Ord. 15, r. 1.

(y) Act of 1883, ss. 25, 26. The last-mentioned section also enlarges in some respects the powers of women married before the 1st January, 1883.

(z) Act of 1883, s. 27.

applicable to actions in the county court as the Judge shall direct, and in default of such direction they shall be taxed under column B (a) of such scales.

"2. Costs of and incidental to an arbitration and award awarded by an arbitrator shall be taxed according to such one of the scales of costs applicable to actions in the county court as the arbitrator shall direct, and in default of such direction they shall be taxed under column B (a) of such scales."

Statutory charge on holding.

Where a landlord (b) pays to his tenant the amount due to him in respect of statutory (c) or substituted (d) compensation (including any compensation claimed by the tenant under custom, agreement, or otherwise not under the Acts, as well as compensation claimed under the Acts), or expends the amount necessary to execute a drainage improvement after notice by the tenant under sect. 4 of the Act of 1883 (e), he is entitled, on making such payment or expenditure, to obtain from the Board of Agriculture & charge on the holding, or any part of it, to the amount of the sum so paid or expended; and the Board will, on proof of the payment or expenditure, and on being satisfied of the observance in good faith by the parties of the conditions imposed by the Acts, make an order charging the holding, or any part of it, in favour of the landlord, his executors, administrators, and assigns, with repayment of the amount paid or expended by such instalments, with such interest, and with such directions for giving effect to the charge, as the Board thinks fit. But where the landlord obtaining the charge is not absolute owner of the holding for his own benefit—where, for instance, he is a tenant for life, or the incumbent of a benefice—no instalment or interest will be made payable after the time when the improvements in respect of which compensation is paid will, in the opinion of the Board, after hearing such evidence (if any) as it thinks expedient, have become exhausted. Obtaining a statutory charge under the Acts will not operate to determine, or work a forfeiture of, the estate or interest of a landlord who holds under a settlement

⁽a) This is the "higher scale" column, applicable where the subject-matter, or the sum recovered, exceeds 20l., and does not exceed 50l. See the County Court Rules, 1903, Appendix, Part IV. (2).

⁽b) In Gough v. Gough, [1891] 2 Q. B. 665, it was held by the Court of Appeal that the executors of a

landlord tenant for life, who after his death had paid compensation claimed in his lifetime, were entitled to a statutory charge under the provision stated in the text.

⁽c) See supra, p. 537.

⁽d) See supra, pp. 540, 541.

⁽e) See supra, p. 540.

or other instrument which in terms makes his estate or interest determinable, or liable to forfeiture, upon his creating or suffering any charge upon it. And capital money arising under the Settled Land Act, 1882(f), may be applied—(i) in payment of any moneys or costs properly expended or incurred by a landlord in or about the execution of any improvement specified in the first or second parts of the first schedule (g) to the Act of 1900, or (ii) in discharge of any statutory charge created on a holding in respect of any such improvement (h).

Where there is a proper case for making a statutory charge for compensation, the arbitrator or other person making the award of compensation is bound, at the request and cost of the party chargeable. entitled to obtain the charge, to certify the amount to be charged, and the term for which the charge may properly be made, having regard to the time at which each improvement in respect of which compensation is awarded is to be deemed exhausted (i); and every such charge is a land charge within the meaning of A charge the Land Charges Registration and Searches Act, 1888 (k), and may be registered accordingly (1).

Arbitrator, &c., to certify amount

Where a sum is charged upon a holding, or part of a holding, Interests by an order of the Board of Agriculture, the sum charged is a charge on the holding, or the part charged, "for the landlord's interest therein, and for all interests therein subsequent to that of the landlord "(m). This enactment means, it is conceived, that only the interests of the landlord and his successors in title are to be affected by the charge; so that incumbrances existing at the date of the charge will remain unaffected by it.

under the Acts is a land charge.

affected by a charge.

Where the landlord is himself a tenant of the holding—as in where the common case where the holder of a long lease subletsa statutory charge will not extend beyond the interest of the tenant.

landlord is

- (f) As to the sources from which capital money may so arise, see sects. 11, 18, 22 (7), 31 (ii), 32-34, 35 (2), and 37 of the Settled Land Act, 1882; and, as to the application of such moneys in payment for improvements, see sects. 21 (iii), 22 (2), and 26 of the same Act.
- (g) That schedule is printed supra, p. 538.
- (h) Act of 1883, s. 29, as amended by Act of 1900, ss. 3 and 12.
- (i) Act of 1900, s. 3 (2). (k) This Act (51 & 52 Vict. c. 51), which has been amended in some

particulars by the Lands Charges Act, 1900 (63 & 64 Vict. c. 26), established a register of land charges, to be kept at the Office of Land Registry, and enacted that a land charge created after the 1st January, 1889, should be void as against a purchaser for value of the land charged therewith, or of any interest in such land, unless and until such land charge should be registered in the register of land charges.

(1) Act of 1900, s. 3 (4).

(m) Act of 1883, s. 30; Act of 1900, s. 3 (1) (3).

landlord, his executors, administrators, and assigns, in the property (n): in other words, the charge will not affect the interest of the reversioner on the landlord's term.

Where landlord is a trustee.

Where the landlord is a person entitled to receive the rents and profits of a holding as trustee, or in any character otherwise than for his own benefit, the amount due from him in respect of statutory or substituted compensation, (including any compensation claimed by the tenant under custom (o), agreement, or otherwise not under the Acts, as well as compensation claimed under the Acts (p)), is to be charged and recovered as follows, "and not otherwise;" (that is to say):—(1) The amount so due is not recoverable against the landlord personally, nor is he under any liability to pay it, but it is a charge on and recoverable against the holding only. (2) The landlord is entitled to obtain from the Board of Agriculture, either before or after he has paid to the tenant the amount due to him, a charge on the holding to the amount of the sum required to be paid, or which has been paid, (as the case may be) to the tenant. (3) If the landlord neglects or fails to pay to the tenant the amount due to him within one month after he has quitted his holding, then, after the expiration of that month, the tenant is entitled to obtain from the Board of Agriculture in favour of himself, his executors, administrators, and assigns, a charge on the holding to the amount of the sum due to him, and of all costs properly incurred by him in obtaining the charge, or in raising the amount due under it. (4) The Board of Agriculture will, on proof of the tenant's title to have a charge made in his favour, make an order charging the holding with payment of the amount of the charge, including costs, in like manner and form as in the case of a charge which a landlord is entitled to obtain (q).

Assignment of charges to and by land companies.

Any company incorporated by Parliament, and having power to advance money for the improvement of land, may take an assignment of any statutory charge made by the Board of Agriculture, upon such terms as may be agreed upon between the company and the person entitled to the charge; and the company may, in its turn, assign any charge so acquired by it to any person or persons whomsoever (r).

⁽n) Act of 1883, s. 30; and see Act of 1900, s. 3 (3).

⁽o) As to custom, see supra, p. 534.

⁽p) Act of 1900, s. 3 (3).

⁽q) Act of 1883, s. 31, as amended by Act of 1900, s. 3 (1) (3).

⁽r) Act of 1883, s. 32, as amended by Act of 1900, s. 3 (1).

The Acts apply, subject to sundry provisions of a special Crown and character, to Crown lands, and to lands belonging to the Duchies of Lancaster and Cornwall (s).

Duchy lands.

With respect to ecclesiastical and charity lands, the exercise Ecclesiastical of the powers conferred by the Acts on a landlord is subject to the previous approval in writing of certain authorities specified in the Act of 1883(t).

and charity

Subject to the special provisions of the Act of 1883 in relation Power of to Crown, Duchy, ecclesiastical, and charity lands, a landlord (u), whatever his estate or interest in his holding may be, may give any consent, make any agreement, or do or have done to him any act in relation to improvements in respect of which compensation is payable under the Acts, which he might give, make, or do or have done to him, if he were, in the case of an estate of inheritance, owner thereof in fee, or, in the case of a leasehold, possessed of the whole estate in the leasehold (x).

landlord who is a limited owner as to consents. &c.

Where by any Act of Parliament (y), deed, or other instrument, a lease of a holding is authorized to be made, provided that the best rent, or reservation in the nature of rent, is reserved by the lease, then if, under any such authority, a holding is leased to the tenant (z) of it, it is not necessary, in estimating such rent or reservation, to take into account against the tenant the increase (if any) in the value of the holding arising from any improvements made or paid for by him on the holding (a).

Cases where " best rent" must be reserved.

Except to the extent expressed in the Acts, their provisions do Saving of not take away, abridge, or prejudicially affect any power, right, rights. or remedy of a landlord, tenant, or other person vested in or exercisable by him by virtue of any other Act or law, or under any custom of the country (b) or otherwise, in respect of a contract of tenancy or other contract, or of any improvements, waste, emblements (c), tillages (b), away-going crops (b), fixtures (d), tax, rate, tithe rentcharge, rent, or other things (e). In other words, the common law rights of landlords and tenants have been

- (s) Act of 1883, ss. 35—37.
- (t) Act of 1883, ss. 38-40.
- (u) I.e., any person for the time being entitled to receive the rents and profits of any holding (Act of 1883, s. 61).
 - (x) Act of 1883, s. 42.
- (y) E.g., the Settled Land Act, 1882, s. 7 (2), supra, p. 43; and cf. the Housing of the Working Classes Act, 1890 (53 & 54 Vict.
- c. 70), s. 74.
- (z) Note that, by sect. 61 of the Act of 1883, the word "tenant" includes the executors, &c., of a tenant, or any person deriving title from a tenant (see supra, p. 537).
 - (a) Act of 1883, s. 43.
 - (b) See supra, pp. 533, 534.
 - (c) See supra, p. 531.
 - (d) See supra, p. 517.
 - (e) Act of 1883, s. 60.

preserved and subsist, in so far as they have not been interfered with by the express provisions of the Acts(f).

Land hired by parish council for allotments. It may here be noticed that, under sect. 10 of the Local Government Act, 1894(g), a parish council has power to hire land for allotments, and such hiring may, under the authority of the county council, be effected compulsorily (h); and the same section provides that, on the determination of any tenancy created by compulsory hiring, a single arbitrator shall have power to determine as to the amount due by the landlord for compensation for improvements, or by the parish council for depreciation; and such compensation is to be assessed in accordance with the provisions of the Agricultural Holdings Acts (i). The arbitrator is to be appointed in accordance with the provisions of sect. 3(k) of the Allotments Act, 1887(l)—that is, by the parties if they agree; or, if they do not agree, by the Local Government Board.

THE ALLOTMENTS AND COTTAGE GARDENS COMPENSATION FOR CROPS ACT, 1887.

Compensation to tenants of allotments.
50 & 51 Vict. c. 26.

This Act of 1887 applies, and is confined, to two classes of small holdings, namely, allotments and cottage gardens. In the Act, an "allotment" means any parcel of land of not more than two acres in extent held under a landlord, and cultivated as a garden or as a farm, or partly as a garden and partly as a farm; a "cottage garden" means an allotment attached to a cottage; and a "holding" means an allotment or a cottage garden (m).

Upon the determination of the tenancy of such a holding (n), the tenant (o) is entitled, notwithstanding any agreement to the

- (f) See per Cozens-Hardy, J., in Mears v. Callender, [1901] 2 Ch. at p. 398.
 - (g) 56 & 57 Vict. c. 73.
 - (h) Act of 1894, s. 10 (1).
- (i) Act of 1894, s. 10 (7). This sub-section refers in terms to the Act of 1883 only, but it is conceived that it must be construed as referring to that Act as amended by the Act of 1900 (see Act of 1900, s. 1 (1) (2), and s. 9 (2)).
 - (k) See sub-sect. (4) of that sect. 3.
 - (1) 50 & 51 Vict. c. 48.
 - (m) Act of 1887, s. 4.
- (n) In the Act of 1887, "contract of tenancy" means the letting of land for any term; and "determination of tenancy" means the
- cesser of a contract of tenancy by effluxion of time or from any other cause (sect. 4). Compare the definitions in the Agric. Hold. Act of 1883, supra, p. 537. As to the assessment by an arbitrator of compensation to the tenant of an allotment under the Allotments Act, 1887 (50 & 51 Vict. c. 48), whose tenancy is determined under sect. 8 of the Act, see that section.
- (o) In the Act of 1887, "tenant" means the holder of a holding under a landlord for any term, and includes the legal personal representative of a deceased tenant; and "landlord" means the person for the time being entitled to receive the rent of any holding. And further, as in the

contrary, to obtain from the landlord compensation in money— (1) for crops, including fruit, growing upon the holding in the ordinary course of cultivation, and for fruit trees and fruit bushes growing thereon, which have been planted by the tenant with the previous consent in writing of the landlord; (2) for labour expended upon and manure applied to the holding, since the taking of the last crop therefrom, in anticipation of a future crop; and (3) for drains, and for any outbuildings, pig-sties, fowl-houses, or other structural improvements made by the tenant upon his holding with the written consent of the landlord (p).

This Act, however, was intended only to provide compensation Intention of for small cottagers (q), who cultivate gardens attached to their the Act of 1887. cottages, or plots of land not so attached, for food or pleasure. Accordingly a piece of land less than an acre in extent, occupied by a seed merchant, and used by him for the cultivation of seeds and other purposes of a seedsman's business, has been held not to be a holding within the Act (r).

In the ascertainment of the amount of compensation payable Deductions to the tenant under this Act, any sum due to the landlord in respect of rent, or of any breach of the contract of tenancy, or of wilful or negligent damage committed or permitted by the tenant, is to be taken into account in reduction of the amount of compensation (s).

from compensation.

The landlord and the tenant may agree upon the amount and Agreement or time of payment of the compensation to be paid; but, if in any case they do not so agree, the difference is to be settled by an arbitrator(t).

arbitration.

Detailed provisions are made by the Act as to the appointment Arbitration of the arbitrator either by the parties jointly, or, in default of provisions. such appointment, by local justices of the peace (u); as to the duties and powers of the arbitrator (x); as to the costs, "if any,"

case of the Agric. Hold. Acts (supra, p. 545), the designations of landlord and tenant continue, for the purposes of this Act of 1887, to apply to the parties to a contract of tenancy until the conclusion of any proceedings taken under this Act on the determination of a tenancy (sect. 4).

(p) Sect. 5.

(q) The Act does not extend to

the metropolis (sect. 2).

(r) Cooper v. Pearse (1896), 44 W. R. 494. In this case the magistrates had decided that narcissus and other bulbs, grown for sale by the tenant, were not "crops . . . growing upon the holding in the ordinary course of cultivation" within the meaning of sect. 5 of the Act; but in the Q. B. Div. no decision was given upon that question.

(s) Sect. 6. Compare sect. 2 (3) of the Agric. Hold. Act, 1900, supra,

p. 546.

(t) Sect. 7.

(u) Sects. 8 and 9.

(x) Sects. 10—12.

of the arbitration, including the remuneration, "if any," of the arbitrator (y); and as to the award, which is required (i) to be in writing signed by the arbitrator (z), (ii) to be ready for delivery within a period of fourteen (extensible by agreement to twenty-eight days after his appointment (z), and (iii) to fix a day, not more than fourteen days after the delivery of the award, for the payment of the money awarded for compensation, costs, or otherwise (a).

The award.

The award is final and conclusive in every case; and neither the submission to arbitration nor the award may be made a rule of any court, or be removed by any process into any court (b).

Recovery of money agreed or awarded to be paid.

Where any money agreed or awarded to be paid for compensation, costs, or otherwise, is not paid within fourteen days after the time when it is agreed or awarded to be paid, it is recoverable, upon order made by the Judge of the county court within the district of which the holding is situate, as money ordered to be paid by a county court under its ordinary jurisdiction is recoverable (c).

Exclusion of Agricultural Holdings Acts. No claim for compensation may be made under the Agricultural Holdings Act of 1883, for any matter or thing in respect of which a claim is made under this Act of 1887; and, in any case (d) in which the provisions of the Acts of 1883 and 1887 conflict, the provisions of the last-mentioned Act are to prevail (e).

THE TENANTS' COMPENSATION ACT, 1890.

53 & 54 Vict. c. 57.

This Act of 1890 was passed for the purpose of remedying a mischief which the compensation legislation of 1883 and 1887(f) had left untouched, that is to say, the possibility that, taking advantage of a rule of the common law (g), a mortgage might

- (y) Sect. 14.
- (z) Sect. 13.
- (a) Sect. 15.

(b) Sect. 16. Compare rules 11—13 in the first part of the second schedule to the Agric. Hold. Act, 1900, supra, p. 550.

- (c) Sect. 17. This section is, in substance, copied from sect. 24 of the Agric. Hold. Act, 1883, q.v., supra, p. 553. As to the procedure for recovering moneys (i) awarded or (ii) agreed to be paid for compensation, &c., under this Act, see the County Court Rules, 1903, Ord. 40, rr. 7, 8.
 - (d) Sc., arising under, or falling

within the scope of, this Act of 1897.

- (e) Sect. 18. Inasmuch as the Agric. Hold. Act, 1900, is (sect. 9(1)) to be construed as one with that of 1883, and in view, too, of sect. 1(1)(2) of the Act of 1900, it is conceived that the references in this 18th section of the Act of 1887 to the Act of 1883 are to be construed as references to that Act as amended by the Act of 1900.
- (f) I.e., the Agric. Hold. Act. 1883, and the Allotments and Cottage Gardens Compensation for Crops Act. 1887.
- (g) See Keech v. Hall (1778), 1 Doug. 21, cited supra, p. 68, q.r.

in some cases (h), eject the tenant under a lease granted subsequently to the mortgage by the mortgagor, and appropriate the crops, &c., on the mortgaged land, without paying any compen sation to the tenant, such a lease not being, at common law, binding upon the mortgagee.

The Act is to be construed as one with the Agricultural Holdings Act, 1883, and the Allotments and Cottage Garden Compensation for Crops Act, 1887, which two Acts are in this Act (and in the present statements of its provisions) referred to as "the principal Acts" (i); and it makes the following pro- Compensavisions for cases where a person occupies land under a contract of tenancy, which, having been made (whether before or after tract of the passing of the Act) with the mortgagor of the land, is not with mortbinding on the mortgagee.

tion to tenant under contenancy made gagor.

In such cases—(i) The occupier of the land is, in the event of the mortgagee taking possession, entitled, as against him, to any compensation which is, or but for the mortgagee taking possession would be, due to the occupier from the mortgagor as respects crops, improvements, tillages (k), or other matters connected with the land, whether under the principal Acts, or the custom of the country (l), or agreements sanctioned (m) by the principal Acts: provided that any sum ascertained to be due to the occupier for such compensation, or for any costs connected therewith, may be set off against any rent or other sum due from him in respect of the land, and recovered as compensation under the principal Acts, but, unless so set off, may, as against the mortgagee, be charged and recovered in accordance only with sect. 31 (n) of the Act of 1883, as if the mortgagee were the landlord within the meaning of that section (o). (ii) Where the contract of tenancy is for a tenancy from year to year, or for a term of years not exceeding twenty-one, at a rack-rent, then, before the mortgagee deprives the occupier of possession of the land otherwise than in accordance with the occupier's contract of tenancy with the mortgagor, he (the mortgagee) must give to the occupier six months' notice in

⁽h) The common law rule has been very materially modified by sect. 18 of the Conveyancing Act of 1881; but that section does not apply to all mortgages. See supra, pp. 66, 225.

⁽i) Act of 1890, s. 1.

⁽k) See supra, p. 533.

⁽l) See supra, \bar{p} 534.

⁽m) See supra, pp. 540—542.

⁽n) Accordingly the mortgagee will not, in a case of that kind, be personally liable to pay the amount of the compensation. As to sect. 31 of the Act of 1883, see supra, p. 556.

⁽o) Act of 1890, s. 2.

writing of his intention so to deprive him; and, if he so deprives him, compensation will be due to the occupier for his crops, and for any expenditure upon the land which he has made in the expectation of holding the land for the full term of his contract of tenancy, in so far as any improvement resulting therefrom is not exhausted at the time of his being so deprived; and such compensation is to be determined in like manner as compensation under the principal Acts, and is to be set off, charged, and recovered in the manner (p) already stated (q).

A charge under this Act of 1890 is a land charge. Where, in pursuance of the above-stated provision of this Act of 1890, compensation for any improvement comprised in Part I. or in Part II. of the first schedule to the Act of 1883 (r) is charged by an order under sect. 31 of that Act (s), the charge is a land charge within the meaning of the Land Charges Registration and Searches Act, 1888 (t), and it must be registered accordingly (u), or will, in default of registration, be void as against a purchaser for value of the land.

THE MARKET GARDENERS' COMPENSATION ACT, 1895.

Market gardens. 58 & 59 Vict. c. 27,

The Market Gardeners' Compensation Act, 1895 (v), is (sect. 1) to be read and construed as part of the Agricultural Holdings (England) Act, 1883 (which is in the Act of 1895 called "the principal Act"), as amended by the Tenants' Compensation Act, 1890. The special provisions of this Act of 1895 with respect to the removal of fixtures (x), the purchase of improvements by an incoming from an outgoing tenant (y) and the removal of fruit trees and bushes (z), have been already noticed. These provisions apply to any holding with respect to which it is agreed in writing (a) after the commencement of the Act, i.e., after the 1st January, 1896, that the holding shall be let or treated as a market garden (b). With respect to tenancies current on the

(p) Sc., in accordance only with sect. 31 of the Act of 1883.

(q) Act of 1890, s. 2.

(1) This schedule is printed supra, p. 538.

(s) As to this sect. 31, see supra, p. 556.

(t) There is a similar provision in sect. 3 (4) of the Agric. Hold. Act, 1900, q.v., supra, p. 555.

(u) Act of 1890, s. 3. Note that this Act does not apply (sect. 4) to

provisions for the payment of tithe rentcharge arising under the Tithe Commutation Act, and subsequent Acts relating thereto.

(v) 58 & 59 Vict. c. 27.

(x) Supra, p. 524.
(y) Supra, p. 542.
(z) Supra, p. 519.

(a) This agreement may, of course, be expressed in a separate document, distinct from the contract of tenancy.

(b) Sect. 3.

1st January, 1896, it is by the fourth section of the Act providea as follows:—

"Where, under a contract of tenancy current at the commence- Tenancies ment of this Act (c), a holding is at that date in use or cultivation $\frac{\text{current}}{1 \text{ Jan. } 1896}$. as a market garden with the knowledge of the landlord, and 58 & 59 Vict. the tenant thereof has then executed thereon, without having c. 27, s. 4. received previously to the execution thereof any written notice of dissent by the landlord, any of the improvements in respect of which a right of compensation or removal is given to a tenant by this Act, then the provisions of this Act shall apply in respect of such holding, as if it had been agreed in writing after the commencement of this Act that the holding should be let or treated as a market garden."

This fourth section is not retrospective: that is to say, it gives no right to compensation except in respect of improvements made after the commencement of the Act (d).

Further, a contract of tenancy to be within the Act must be for not less than a yearly tenancy (e); but an agreement for a tenancy at a yearly rent may be within the Act, notwithstanding that, by virtue of a special provision in the agreement, a three months' notice to quit may be given, expiring at any time of the year (f).

The fifth section of the Act provides for cases in which com- sects. 5 and 6. pensation is payable in respect of Crown lands, or lands belonging to the Duchy of Lancaster or the Duchy of Cornwall; and sect. 6 defines the expression "market garden" as follows:-

"For the purposes of the principal Act and of this Act, the Meaning of expression 'market garden' shall mean a holding, or that part gardens. of a holding, which is cultivated wholly or mainly for the purpose of the trade or business (g) of market gardening."

- (c) I.e., the 1st January, 1896 (sect. 2).
- (d) See per Cozens-Hardy, J., in Meurs v. Callender, [1901] 2 Ch. 388, at p. 398, following on this point the decision of the House of Lords in Smith v. Callander, [1901] A. C. 297, upon a substantially identical section in the corresponding Scottish Act, the Market Gardeners' Compensation (Scotland) Act, 1897 (60 & 61 Vict. c. 22). In the Scottish case the question whether, in the expression "and the tenant thereof has then executed," &c., the word "then" refers to the
- commencement of the Act, or means "thereupon" or "thereafter," was discussed, but not decided.
- (e) Agric. Hold. Act, 1883, s. 61, *supra*, p. 537.
- (f) King v. Eversfield, $\lceil 1897 \rceil$ 2 Q. B. 475.
- (y) The object of these words "trade or business" appears to be to exclude from the operation of the Act such cases as those in which a tenant, who is not in business as a market gardener, grows fruits or vegetables in his kitchen garden, and sells them.

SECT. V.—DELIVERY OF POSSESSION.

(1) TENANT'S OBLIGATION TO GIVE POSSESSION.

Damages for non-delivery of possession.

Upon the demise of a house or premises there is implied an undertaking by the tenant that he will deliver up possession to the landlord at the expiration of the term (h). If the premises are then in the occupation of an undertenant, the landlord may refuse to accept the possession (i), and may recover from the original tenant rent for the period after the expiration of the term during which the undertenant remains in possession (k), and also the costs of an action of ejectment brought against such. undertenant in order to obtain possession (l). He may recover also the reasonable damages and costs sustained by him in an action at the suit of a person to whom he had contracted to let the land, but to whom he cannot deliver possession by reason of the tenant's wrongful holding over (m). On breach of a covenant to deliver up possession, the sum to be recovered is not the value of the land, but the real damage sustained by the landlord, which may be considerable or only nominal (n).

Where premises are let to two persons for a term of years, and at the end of such term one of them holds over with the assent of the other, both will be liable for the time during which the one holds over (o). But one tenant cannot bind his co-tenant by holding over without his assent (p).

Encroachments. In addition to the land originally demised, the landlord is entitled at the determination of the tenancy to recover from the tenant any land which the tenant may have added to it by encroachment on adjoining land, such encroachment being deemed to be made by him as tenant as an addition to his holding, and consequently for the benefit of his landlord; unless it is made under circumstances showing an intention to hold it for

(h) Henderson v. Squire (1869), L. R. 4 Q. B. 170, 173; Harding v. Crethorne (1793), 1 Esp. 57. See Hey v. Moorhouse (1839), 6 Bing N. C. 52; Outram v. Maude (1881), 17 Ch. D. p. 404.

(i) Per Lord Kenyon, C.J., in Harding v. Crethorne, supra.

(k) Ibbs v. Richardson (1839), 9 A. & E. 849. (f. Levy v. Lewis (1861), 9 C. B. N. S. 872. As to the recovery of articles wrongfully removed during the tenancy, see Petre v. Ferrers (1891), 61 L. J. Q. B. 426.

(I) Henderson v. Squire, supra. (m) Bramley v. Chesterton (1857), 2 C. B. N. S. 592.

(n) Watson v. Lane (1856), 11 Ex. p. 774.

(a) Christy v. Tancred (1842), 9 M. & W. 438. See 7 M. & W. 127; Tancred v. Christy (1843) 12 M. & W. 316.

(p) Draper v. Crojts (1846), 15 M. & W. 166.

his own benefit alone, and not as part of his holding under the landlord (q). The rule applies although the land belongs to the landlord and has been taken in with his assent (r), but if he expressly refuses assent, the tenant incloses for his own benefit (s). And the tenant retains the benefit of an inclosure made prior to the lease (t).

The rule applies also where the encroachment is at a distance from the demised premises, provided the distance is not so great that the tenant must be presumed to have taken in the land for his own benefit (u). It is not necessary, it has been said, that the encroachment should be conterminous with the holding. It is enough if it is so near that by reason of its nearness the tenant gained the opportunity of making it, and the landlord might have tacitly acquiesced in it (x). But the encroachment is severed from the holding if it is conveyed to a third person and the conveyance is communicated to the landlord, and it need not then be delivered up at the end of the term (y). The landlord cannot sue during the term in respect of an encroachment on his own land of which the tenant has had possession for more than twelve years (z).

(2) LANDLORD'S REMEDIES FOR RECOVERING POSSESSION.

(i) Indirect.

In certain cases of holding over by the tenant a liability is imposed on him by statute to pay either double the annual value of the premises or double the rent: the former when the tenant holds over after the determination of the term, knowing that he

⁽q) Per Willes, J., in Whitmore v. Humphries (1871), L. R. 7 C. P. 1, 4; Att.-Gen. v. Tomline (1880), 15 Ch. D. p. 160; Doe v. Rees (1834), 6 C. & P. p. 610; Doe v. Tidbury (1854), 14 C. B. p. 325; Doe v. Mulliner (1795), 1 Esp. 460; Andrews v. Hailes (1853), 2 E. & B. p. 353; Kingsmill v. Millard (1855), 11 Ex. pp. 315, 318; Doe v. Williams (1836), 7 C. & P. 332. But it has been held that the rule applies only to inclosures of waste land: Lord Hastings v. Saddler (1898), 79 L. T. 355.

⁽r) Whitmore v. Humphries, supra. (s) Doe v. Massey (1851), 17 Q. B. 373.

⁽t) Dixon v. Baty (1866), L. R. 1 Ex. 259.

⁽u) Kingsmill v. Millard (1855), 11 Ex. 313.

⁽x) Per Willes, J., in E. of Lisburne v. Davies (1866), L. R. 1 C. P. p. 268, where the intervention of a river and a strip of waste land was held not to rebut the ordinary presumption; and the result was the same in Andrews v. Hailes (1853), 2 E. & B. 349, where a road intervened.

⁽y) Kingsmill v. Millard (1855), 11 Ex. p. 318. See Doe v. Jones (1846), 15 M. & W. 580.

⁽z) Tubor v. Godfrey (1895), 64 L. J. Q. B. 245.

has no right to do so; the second when a tenant holds over after the expiration of a notice to quit given by himself.

Action for double value.

4 Geo. 2, c. 28, s. 1.

Tenant holding over after determination of tenancy and notice in writing given by landlord, to pay double value.

It is enacted by the first section of the Landlord and Tenant Act, 1730 (a), that in case any tenant for any term for life or years, or other person who shall come into possession of any lands, tenements, or hereditaments under, or by collusion with, such tenant, shall wilfully hold over any lands, tenements, or hereditaments after the determination of such term, and after demand made and notice in writing given, for delivering the possession thereof, by his landlord, or the person to whom the remainder or reversion of such lands, &c., shall belong, or his agent thereunto lawfully authorized (b), such person so holding over shall, during the time he shall so hold over, or keep the person entitled out of possession of the said lands, &c., as aforesaid, pay to the person so kept out of possession, his executors, administrators or assigns, at the rate of double the yearly value of the lands, &c., so detained, for so long time as the same are detained, to be recovered in any court of record; against the

Application of statute.

This statute, being penal, is construed strictly, and it does not apply to holding over by a weekly tenant (c), or, probably, by a quarterly tenant or other tenant for a term less than a year (d); but it applies to a tenant from year to year (e). To bring a case within the statute holding over must be wilful and contumacious, the tenant being conscious that he has no right to retain possession; and it does not apply where the holding over is in consequence of a bonâ fide mistake or under a fair claim of right, and no fraud is intended (f); nor where the holding over is by a subtenant without the assent or authority of the tenant (g). The notice may be given either before (h) or after (i) the expiration of

recovering of which said penalty there shall be no relief in equity.

Notice

(a) 4 Geo. 2, c. 28.

(b) The notice can be given by a receiver appointed by the Court: Wilkinson v. Colley (1771), 5 Burr. 2694; or by a receiver appointed under a mortgage deed with power to give notice to quit: Poole v. Warren (1838), 8 A. & E. 582.

(c) Lloyd v. Rosbee (1810), 2 Camp. 453.

(d) Lloyd v. Rosbee, supra. See Wilkinson v. Hall (1837), 3 Bing. N. C. 508.

(e) Ryall v. Rich (1808), 10 East, 48.

(f) Wright v. Smith (1805), 5 Esp. 203 (the headnote to this case does not correctly state its effect); Soulsby v. Neving (1808), 9 East, p. 313; Hirst v. Horn (1840), 6 M. & W. 393; Swinfen v. Bacon (1860), 6 H. & N. 184; aff. 6 H. & N. 846; Rawlinson v. Marriott (1867), 16 L. T. 207.

(g) Rands v. Clark (1879), 19 W. B. 48.

(h) Cutting v. Derby (1776), 2 W. Bl. 1075; Messenger v. Armstrong (1785), 1 T. R. 53.

(i) Cobb v. Stokes (1807), 8 East, 358.

the tenancy, though if given after, the landlord must not have done any act in the meantime to recognize the person to whom the notice is given as continuing his tenant (k); and there need not be a distinct demand in addition to the notice. quit is itself a sufficient demand for possession to be given up (l). But the demand must be for delivery of possession at the end of the term, and a notice for noon on the last day is bad (m). calculating the yearly value of the lands, only the value of the Yearly value. hereditaments as such is to be taken, and not the value of benefits connected with them, such as a supply of steam-power let with a room in a factory (n). The double value is reckoned from the determination of the tenancy, if the notice was given before such determination (o), or, if the notice was given after such determination, then from the time of giving the notice (p). The action Who may sue. lies at the suit only of the landlord or reversioner (q), and it cannot be brought by a lessee to whom the landlord has granted a fresh lease to begin from the expiration of the old one (r). The executor of the landlord can sue, though not the administrator of the executor without taking out administration de bonis non, although the tenant has attorned to him (s). The action can be Action in

county court.

(k) Cobb v. Stokes, supra, per Lord Ellenborough, at p. 361.

(l) Messenger v. Armstrong, supra; Hirst v. Horn (1840), 6 M. & W. 393.

(m) Page v. Moore (1850), 15 Q. B. 684. The notice, when given before the expiration of the tenancy, may be in the following form:— To Mr. C. D.

I hereby demand of you that you deliver up possession of the house [lands] and premises, with the appurtenances, situate at —, in the parish of —, in the county of —, on the —— day of — next, being the day on which your term therein will determine. And I give you notice, that in case you hold over the said premises after the determination of such term, you will be required to pay at the rate of double the yearly value of the said premises for so long a time as the same shall be detained by you.

Dated this —— day of ——, 19—. E. F.

If given after the tenancy has expired, the notice may be in the following form:—

To Mr. C. D.

I hereby demand of you that you immediately deliver up possession of the house [lands] and premises, with the appurtenances, situate at ——, in the parish of —, in the county of —. And I give you notice, that in case you hold over the said premises after the service of this demand and notice, you will be required to pay at the rate of double the yearly value of the said premises for so long a time as the same shall be detained by you.

Dated this —— day of ——, 19—. E. F.

- (n) Robinson v. Learoyd (1840), 7 M. & W. 48.
- (a) Soulsby v. Neving (1808), 3 East, 310.
 - (p) Cobb v. Stokes (1807), 8 East, 358.
- (q) Where the lease is by the husband holding in right of his wife, see Harcourt v. Wyman (1849), 3 Ex. 817.
- (r) Blatchford **v.** Cole (1858), 5 C. B. N. S. 514.
- (s) Tingrey v. Brown (1798), 1 B. & P. 310.

brought in the county court, provided the amount claimed does not exceed 50l.(t). It can be brought notwithstanding that the landlord has obtained judgment in ejectment (u).

No distress for double value.

Waiver of double value.

The landlord cannot distrain for double value (x); and if he demands possession in the middle of a quarter or other term of payment, he cannot recover the rent for the antecedent fraction of such quarter or other term of payment (y). Acceptance of rent before an action is brought by the landlord for the double value may operate as a waiver of the landlord's claim to the double value; whether it does so or not is a question for the jury; but if rent is accepted after such action has been brought, it becomes a question whether it has been received in part satisfaction of the double value, or as a waiver of it (z).

Action or distress for double rent.

11 Geo. 2, c. 19, s. 18.

Tenant holding over after expiration of notice to quit given by him, to pay double rent.

By the 18th section of the Distress for Rent Act, 1737 (a), it is enacted that in case any tenant shall give notice of his intention to quit the premises by him holden, at a time mentioned in such notice, and shall not accordingly deliver up the possession thereof at the time in such notice contained, the said tenant, his executors or administrators, shall from thenceforward pay to the landlord double the rent or sum which he should otherwise have paid, to be levied, sued for, and recovered at the same time and in the same manner as the single rent or sum before the giving such notice could be levied, sued for, or recovered; and such double rent or sum shall continue to be paid during all the time such tenant shall continue in possession as aforesaid (b).

Application of statute.

A decision (c) that this statute does not apply to weekly tenants seems to have been given under the erroneous assumption that it was similar to 4 Geo. 2, c. 28, and therefore governed by Lloyd v. Rosbee (d). In fact it applies to every tenant (e) who has power to determine his tenancy by notice, and who

- (t) County Courts Act, 1888, s. 56; Wickham v. Lee (1848), 12 Q. B. 521.
- (u) Soulsby v. Neving (1808), 9 East, 310.
- (x) Judgment of Wilmot, J., in Timmins v. Rowlison (1764), 1 W. Bl. p. 535.
- (y) Cobb v. Stokes (1807), 8 East, 358.
- (z) Judgment of Lord Ellenborough in Ryall v. Rich (1808), 10
- East, p. 52. See Doe v. Batten (1775), Cowp. 243, 246. As to pleading waiver, see Rawlinson v. Marriott (1867), 16 L. T. 207.
 - (a) 11 Geo. 2, c. 19.
- (b) See Anon. (1773), Lofft, 275. (c) Sullivan v. Bishop (1826), 2 C. & P. 359.
 - (d) Supra, p. 566.
- (e) See Bullen, Distress, 2nd ed. p. 135, note (c).

gives a notice binding upon him (f). The notice may be either verbal or written (g), but must be to quit at a fixed time. A notice to quit upon a contingency will not do, although the contingency happens and the tenant then declines to quit (h). The statute contemplates a continuing tenancy, and the double rent is recoverable by distress; but it ceases to be payable on the tenant quitting possession, and he may do this at any time without giving a new notice to quit (i). In justifying a claim for double rent under the statute, the terms of the tenancy and of the notice to quit should be shown, that the tenant's power to determine the tenancy by notice and the sufficiency in law of the notice may appear (k).

(ii) Direct Remedies for recovering Possession.

ENTRY.

Where at the time of the expiration or determination of the Entry. tenancy there is no person in possession of the premises—the 1. On abantenant having wholly abandoned them without any intention of mises. returning—the landlord may enter and take possession (l).

If the tenancy of a house is determined, and the tenant and 2. On lockedhis family have gone away, and the house is locked up—no one being in possession—the landlord is justified in breaking in and obtaining possession, although some articles of furniture may remain (m).

up premises, where no one is in possession.

Even where the tenant is in possession the landlord, after the 3. Where expiration of the tenancy, may enter upon the premises, and may use such force as does not tend to a breach of the peace (n); but if he does more than this, he will be subject to an indictment under the Statutes of Forcible Entry (o), and subject also, under

tenant is in possession.

- (f) Johnstone ∇ . Hudlestone (1825), 4 B. & C. 922, 931.
- (g) Timmins v. Rowlison (1764), 1 It will be observed W. Bl. 533. that the landlord's notice for double value (ante, p. 566) must be in writing. Wilmot, J., explained the reason of the difference to be that "landlords can usually write and tenants cannot": 1 W. Bl. 535.
- (h) Farrance v. Elkington (1801), 2 Camp. 591, 592.
- (i) Booth v. Macfarlane (1831), 1 B. & Ad. 904, 906.
 - (k) Humberstone v. Dubois (1842),

- 10 M. & W. 765.
- (1) Lacey v. Lear (1802), Peake's Add. Cas. 210. See Wildbor v. Rainforth (1828), 8 B. & C. 4, 6.
- (m) Hillary v. Gay (1833), 6 C. & P. 284; Taunton v. Costar (1797), 7 T. R. 431; Turner v. Meymott (1823), 1 Bing. 158.
- (n) Williams v. Taperell (1892), 8 T. L. R. 241. See Scott v. Matthew Brown & Co. (1884), 51 L. T. 746.
- (o) 5 Ric. 2, c. 7; 15 Ric. 2, c. 2; see also 8 Hen. 6, c. 9; 31 Eliz. c. 11. Forcible entry is "entry with a strong hand, with unusual weapons, or with

TERMS OF QUITTING.

the same statutes, to be compelled by order of the justices to restore possession to the tenant. Moreover, though the forcible entry by itself gives rise to no civil remedy (p), yet the landlord is liable in damages for any independent or incidental wrong, such as damage to the tenant or to his family or his property, done in the course of the entry (q). If, however, the landlord enters peaceably, and then, in the exercise of his rights as owner, injures property which is unlawfully upon the premises, he is not liable (r).

Statute of Limitations.

Right of entry barred in twelve years.

The lessor's right of entry or action is subject to be barred, and his title to be extinguished, by the Statute of Limitations. By sect. 1 of the Real Property Limitation Act, 1874 (s), it is provided that no person shall make an entry or distress, or bring an action to recover any land or rent, but within twelve years after the time when his right to make the entry or distress or to bring the action shall have accrued either to himself or to some person through whom he claims (t). For the cases of a tenancy at will and a tenancy from year to year the time when the right accrues, and when, therefore, the twelve years begin to run, is specially fixed. Under a tenancy at sufferance the owner has an existing right of entry, and the statute runs against him, from the commencement of the tenancy.

Tenancy at will: R. P. L. Act, 1833, s. 7.

With regard to tenants at will, it is by the seventh section of the Real Property Limitation Act, 1833(u), enacted as follows:— "When any person shall be in possession or in receipt of the

menace of life or limb" (Bac. Abr. III., Parke, B., and Coltman, J., and tit. "Forcible Entry"); and see reiterated by the two former Judges Edwick v. Hawkes (1881), 18 Ch. D. 199, 211.

(p) Per Fry, J., in Beddall v. Maitland (1881), 17 Ch. D. 174, 188; Taunton \mathbf{v} . Costar, supra; Burling \mathbf{v} . Read (1850), 11 Q. B. 904; Pollen v. Brewer (1859), 7 C. B. N. S. 371; Beattie v. Mair (1882), 10 L. R. Ir. See Davison v. Wilson 208, 211. (1848), 11 Q. B. 890.

(q) Newton v. Harland (1840), 1 M. & Gr. 644; Hillary v. Gay (1833), 6 C. & P. 284; Edwick v. Hawkes (1881), 18 Ch. D. 199, 211. seems to be the better opinion, notwithstanding the view expressed at various stages of the litigation in Newton v. Harland by Alderson, B.,

in Harvey v. Brydges ((1845), 14 M. & W. 437), that the possession under the right of entry was lawful for all purposes, and justified the removal of the tenant and his family as trespassers, provided only so much force was used as was necessary. 17. Blades v. Higgs (1861), 10 C. B. N. S. p. 721, and see Pollock on Torts, 6th ed. p. 370.

(r) Jones v. Foley, [1891] 1 Q. B. **730.**

(s) 37 & 38 Vict. c. 57.

(t) Re Jolly, C. A., [1900] 2 Ch. 616, reversing North, J., [1900] 1 Ch. **292.**

(u) 3 & 4 Will. 4, c. 27.

profits of any land, or in receipt of any rent (x), as tenant at will, the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or distress or bring an action to recover such land or rent shall be deemed to have first accrued either at the determination of such tenancy, or at the expiration of one year next after the commencement of such tenancy, at which time such tenancy shall be deemed to have determined "(y).

Hence if the tenancy is actually determined within a year of When statute its commencement, and the tenant remains in occupation with- runs in favour out the creation of a fresh tenancy, time runs from such will. determination; if it is not determined within the year, time runs from the end of the year (z). Consequently, where the owner of a house or land lets a person into possession as tenant at will, and nothing further is done, his title is extinguished in thirteen years; and a merely permissive occupation has the effect of a tenancy at will. But the statute will not run if it can be shown that the occupation is as a guest (a) or servant (b), and not as a tenant. The operation of the statute is stopped by an entry on the part of the landlord such as to amount to a resumption of possession (c), or by the creation of a fresh tenancy at will or other tenancy (d), and also by an acknowledgment by the tenant of the landlord's title (e).

When any person shall be in possession or in receipt of the Tenancy from profits of any land, or in receipt of any rent, as tenant from year to year or other period, without any lease in writing, the right 1833, s. 8

of tenant at

year to year: R. P. L. Act,

(x) I.e., rentcharge. See Grant v. Ellis (1841), 9 M. & W. 113; Irish Land Commission v. Grant (1884), 10 App. Cas. p. 26.

(y) The section concludes with a proviso that "no mortgagor or cestui que trust shall be deemed to be a tenant at will, within the meaning of this clause, to his mortgagee or trustee." As to this proviso, see per Kay, L.J., in Warren v. Murray, [1894] 2 Q. B. **648.**

(z) Doe v. Turner (1840), 7 M. & W. 226; Doe v. Carter (1847), 9 Q. B. 863; Day v. Day (1871), L. R. 3 P. C. 751; Wimbledon Conservators v. Nicol (1894), 10 T. L. R. 247. The rule is well settled, though in Randall v. Stevens (1853), 2 E. & B. 641, Lord Campbell, C.J., doubted this construction of the section. See Sands to Thompson (1883), 22 Ch. D. 614. (a) Peakin v. Peakin, [1895] 2 Ir. R.

359.

(b) Moore v. Doherty (1843), 5 Ir. L. R. 449; Allen v. England (1862), 3 F. & F. 49, note. See Mayor of Brighton v. Guardians of Brighton (1880), L. R. 5 C. P. D. 368.

(c) Randall v. Stevens (1853), 2 E. & B. 641; but an entry merely to repair is not sufficient: Lynes v. Snaith (1899), 68 L. J. Q. B. 275.

(d) Turner v. Bennett (1842), 9 M. & W. 643; Locke v. Matthews (1863), 13 C. B. N. S. 753; Hodgson v. Hooper (1860), 3 E. & E. 149. As to what constitutes a fresh tenancy, see Jarman v. Hale, [1899] 1 Q. B. 994.

(e) Infra, p. 573.

of the person entitled subject thereto, or of the person through whom he claims to make an entry or distress, or to bring an action to recover such land or rent, shall be deemed to have first accrued at the determination of the first of such years or other periods, or at the last time when any rent payable in respect of such tenancy shall have been received (which shall last happen) (f).

When statute runs in favour of yearly tenant.

Since the section gives two alternative points from which the statute will run—the end of the first year of the tenancy or the last receipt of rent—it has been held that the lessor's title is not necessarily extinguished at the expiry of twelve years from the end of the first year, even though during such twelve years no payment of rent takes place. If, subsequently to the twelve years, rent is paid, the landlord has then a further similar period during which he can assert his title (g). The payment on which reliance is placed must be in respect of rent(h), and the payment may be proved by the parol admission of the tenant (i). From the date of such payment the statute forthwith commences to run The section applies only where there is no lease in afresh (k). writing; but, to constitute a "lease in writing" of land within the meaning of the section, there must be not merely an instrument which would be evidence of the conditions of holding, but one passing an interest in the land (l).

Term of years.
Statute does not run in favour of lessee during term.

For the cases of a tenancy for a term of years and of a yearly tenancy under a lease in writing no special provision is made; but, since the lessor has no present right to possession, the statute does not run against him or persons claiming under him (m) until the determination of the term or of the yearly tenancy. The result is the same although no rent has been paid for more than twelve years (n). If the lease should be void, time will run from the date when possession is taken, unless a yearly tenancy is

(g) Bunting v. Sargent (1879), 13 Ch. D. 330. See, however, Sanders (i) Doe v. Beckett (1843), 4 Q. B. 601.

6 D. M. & G. 111.

(k) Baines v. Lumley (1868). 16 W. R. 674.

(l) Doe v. Gower (1851), 17 Q. B. 589, at p. 599.

(m) Kennedy v. Woods (1867), Ir. R. 1 C. L. 76.

(n) Doe v. Oxenham (1840), 7 M. & W. 131.

⁽f) See Re Jolly, [1900] 2 Ch. 616, reversing [1900] 1 Ch. 292, where, a testatrix's son having acquired an absolute title to a freehold farm, which had been let by her to him, through non-payment of rent by him to her for upwards of twelve years, it was held by the C. A. that the unpaid rent was not owing to her estate, and could not be deducted from the son's share under her will.

v. Sanders (1881), 19 Ch. D. 373. (h) See Att.-Gen. v. Stephens (1855).

created by payment of rent (o). But in a case where there is no lease, the rights of the parties will be saved from the operation of the statute if in equity a lease must be assumed (p). Equitable rights, equally with legal rights, prevent the bar of the statute (q). Hence, where a person has entered into possession under an agreement which entitles him to have a lease granted for a term, since the lessor would be restrained from exercising his right of entry, the statute does not run against the lessor during the currency of the agreed period (r). Where a surrender of a lease is implied from a grant of a new lease to the same lessee, the lessor acquires momentarily an estate in possession out of which the new leasehold interest is derived, and if a person is then in occupation without title, the lessor has also an immediate right of entry, and the statute will begin to run against him (s); but otherwise where an underlessee is in occupation (t).

Where a trespasser has, as against a lessee of land, acquired by possession a statutory title to the land, and in that state of circumstances the lessee purports to surrender the land to the lessor, the surrender confers no right of re-entry; and accordingly the statute does not begin to run against the lessor until the expiration of the term for which the lease was granted (u).

But although, during the currency of a lease for a term, the Adverse title lessee can claim no title against the lessor; nor can a stranger by receipt who merely enters and occupies (x); yet, if there is a lease in writing by which a rent of 20s. or upwards is reserved, a stranger who wrongfully claims to be entitled to the reversion (y), and who actually receives the rent(z), may gain a title against the true owner, the statute in such a case running from the first wrongful receipt of rent (a).

In all cases where the statute is running against the owner of Acknowledg-

of stranger

```
(o) Magdalen Hospital v. Knotts
(1879), 4 App. Cas. 324; Webster v.
Southey (1887), 36 Ch. D. 9.
```

(p) Archbold v. Scully (1861), 9 H. L. C. 360.

(q) R. P. L. Act, 1833, s. 24.

(r) Drummond v. Sant (1871), L. R. 6 Q. B. 763; Warren v. Murray, [1894] 2 Q. B. 648. See White v. Whitewood (1897), T. L. R. 409.

(s) Ecclesiastical Commissioners v. Rowe (1880), 5 App. Cas. 736, per Lord Selborne, C.

(t) Corpus Christi College v. Rogers

(1879), 49 L. J. Q. B. 4; Ecclesiastical Commissioners v. Treemer, [1893] 1 Ch. 166.

(u) Walter \mathbf{v} . Yalden, [1902] 2 K. B. 304.

(x) Chadwick v. Broadwood (1840), 3 Beav. 308.

(y) See Lyell v. Kennedy (1889), 14 App. Cas. 437; Shaw v. Keighron (1869), 3 Ir. R. Eq. 574.

(z) Twiss v. Noblet (1869), 4 Ir. R. Eq. p. 78.

(a) R. P. L. Act, 1833, s. 9. See Scott v. Nixon (1843), 2 Con. & L. p. 191.

land, its operation can be stopped by the acknowledgment of the owner's title by the person in possession. Such acknowledgment must be in writing; it must be given to the person entitled, or his agent; and it must be signed by the person in possession (b). Immediately after the acknowledgment the statute will begin to run afresh (c); but if the statutory period has already run, so that the owner's title is extinguished under sect. 34 of the Real Property Limitation Act, 1833, no subsequent acknowledgment will revive it (d).

ACTION IN THE HIGH COURT.

Action for recovery of land.

By the Common Law Procedure Act, 1852(e), a summary procedure was introduced whereby the landlord could in an action of ejectment recover possession of the premises against a tenant holding over after the expiration of the term (f); and in any action of ejectment by a landlord against a tenant the jury were empowered to find a verdict both for recovery of the premises and for mesne profits down to the time of verdict (g). These provisions are still in force, but for the action of ejectment has now been substituted an action for the recovery of land (h) brought under the Rules of the Supreme Court, 1883; and in practice the summary method by special indorsement of the writ has superseded sect. 213 of the Act of 1852, while sect. 214 of that Act is replaced by a provision in the Rules that claims in respect of mesne profits may be included in the action for recovery of land (i).

Special indorsement.

In actions for the recovery of land, with or without a claim for rent or mesne profits, by a landlord against a tenant whose term has expired or has been duly determined by notice to quit, or against persons claiming under such tenant, the writ of summons may, at the option of the plaintiff, be specially indorsed with a statement of his claim (k), or of the remedy or relief to which he claims to be entitled (l). This rule only applies where the term

(b) R. P. L. Act, 1833, s. 14. As to personal signature by the person in possession, see Ley v. Peter (1858), 3 H. & N. 101; Corp. of Dublin v. Judge (1847), 11 Ir. L. R. 8.

(c) See Scott v. Nixon (1843), 3 Dr. & War. p. 404.

(d) Sanders v. Sanders (1881), 19 Ch. D. 373, overruling Stansfield v. Hobson (1853), 3 D. M. & G. 620.

(e) 15 & 16 Vict. c. 76.

(f) Sect. 213.

(y) Sect. 214.

(h) See Gledhill v. Hunter (1880), 14 Ch. D. 492. It has been held in Ireland that the action is not exclusively reserved to the Common Law Divisions: Clanricarde v. Ryder, [1898] 1 Ir. R. 98.

(i) R, S. C. Ord. 18, r. 2.

(k) As to what the writ should show, see Hanmer v. (lifton, [1894] 1 Q. B. 238.

(l) R. S. C. Ord. 3, r. 6.

has expired in the ordinary course, or has been regularly determined by notice to quit; not where it is determined by surrender (m)or forfeiture (n). But it applies where a tenancy at will, including such a tenancy existing under a mortgage, is ended by the determination of the landlord's will (o). It applies only where the plaintiff is the landlord who originally granted the lease, or, if the plaintiff derives title under such original landlord, the defendant must be estopped, by payment of rent or otherwise, from disputing his title (p); and the facts creating the estoppel must not be in dispute (q). Where the writ is specially indorsed and the defendant has appeared to it, judgment may, unless the defendant gets leave to defend, be obtained summarily under Ord. 14, and the judgment may include mesne profits to be calculated up to the date of the plaintiff's obtaining possession (r).

Where the writ is not specially indorsed the action will proceed Procedure. to trial in the ordinary way, subject to the special rules relating to an action for recovery of land. The plaintiff will be the person in whom the legal reversion is vested (s), who may be a mortgagee (t). It is enacted by sect. 25, sub-sect. (5), of the Judicature Act, 1873, that "a mortgagor entitled for the time being to the possession or the receipt of the rents and profits of any land, as to which no notice of his intention to take possession, or to enter into the receipt of the rents and profits thereof, shall have been given by the mortgagee, may sue for such possession." That sub-section is not easy to construe; but, whatever other rights it may give to a mortgagor in possession, it certainly does not give him any power of re-entry or right of forfeiture which he did not before the Act possess, and accordingly does not enable him, while a lease is subsisting, to eject the tenant for breach of lessee's covenants (u).

(m) Doe v. Roe (1831), 2 B. & Ad. 922, decided on the corresponding provision of 1 Geo. 4, c. 87, 8. 1.

(n) Arden v. Boyce, [1894] 1 Q. B. 796. See Doe v. Sharpley (1846), 15 M. & W. 558.

(v) Kemp v. Lester, [1896] 2 Q. B. 162; Daubuz v. Lavington (1884), 13 Q. B. D. 347; Hall v. Comfort (1886), 18 Q. B. D. 11; Jerred v. Edwards (1891), 92 L. T. Jo. 8. As to attornment clauses in mortgage deeds, vid. supra, p. 83.

(p) Casey v. Hellyer (1886), 17

Q. B. D. p. 99.

(q) See Jones v. Stone, [1894] A.C. 122.

(r) Southport Tramways Co. v.

Gandy, [1897] 2 Q. B. 66.

(s) Allen v. Woods (1893), 68 L. T. 143. One tenant in common may bring ejectment for his share of the premises: Cutting v. Derby (1776), 2 W. Bl. 1077.

(t) See Matthews v. Usher, [1900] 2 Q. B. 535.

(u) Mutthews v. Usher, supra, at p. 539.

Service of writ.

If the possession of the premises is vacant, service of the writ, if it cannot otherwise be effected, may be made by posting a copy of the writ upon the door of the dwelling-house or other conspicuous part of the property (x). Where the action is brought only to recover land situate within the jurisdiction (with or without rents or profits), the writ may, by leave of the Court or a Judge, be served out of the jurisdiction (y). Judgment for the recovery of possession of land may be enforced by writ of possession (z), and the writ will issue notwithstanding that the landlord's estate in the premises has terminated after the commencement of the action and before trial, unless the issue of the writ would be unjust and futile; and this it lies upon the defendant to show (a).

Claim by stranger.

Where an action to recover the land is brought against the tenant by a person claiming adversely to the landlord, the tenant is required, under penalty of forfeiting the value of three years improved or rack-rent of the premises (b), to give notice to the landlord, so that the latter may defend his title (c). The landlord can then, by leave of the Court or a Judge, appear and defend (d).

ACTION IN THE COUNTY COURT.

The landlord can recover possession in the county court, either by an action for the recovery of possession, or by an action of ejectment (e). The first is a procedure specially designed for the case of landlord and tenant, and applies where the tenant is holding over or where the landlord has a present right of re-entry for rent in arrear: the second corresponds with the ordinary procedure in ejectment.

(x) R. S. C. Ord. 9, r. 9. See the notes to that rule in the Annual Practice and in the Yearly Supreme Court Practice; and see further, as to procedure, Ord. 12, r. 28 (defence limited to part of property claimed); Ord. 13, rr. 8, 9 (judgment in default of appearance, or upon limited defence); Ord. 27, rr. 7, 8 (judgment in default of pleading).

(y) R. S. C. Ord. 11, r. 1 (a); judgment of Coloridge, J., in Agnew v. Usher (1884), 14 Q. B. D. 78.

(z) R. S. C. Ord. 42, r. 5; Ord. 47, rr. 1, 2. Where the execution of the writ will evict a person other than the defendant, who has no notice of the action, and who does not claim to hold through the defendant, the judgment will be set aside so far as concerns such person on his electing to be added as defendant: *Minet* v. *Johnson* (1890), 63 L. T. 507. See Ord. 12, r. 25.

(a) Knight v. Clarke (1885), 15 Q. B. D. 294. See Gibbins v. Buckland (1863), 1 H. & C. 736.

(b) See Crocker v. Fothergill (1819), 2 B. & A. 652.

(c) Common Law Procedure Act (15 & 16 Vict. c. 76), s. 209.

(d) See R. S. C. Ord. 12, rr. 23—27. As to ejectment by mortgages, see Buckley v. Buckley (1787), 1 T. R. 647.

(e) County Court Rules, 1903, Ord. 5, r. 3.

The County Courts Act, 1888, provides (by sect. 138) that when Action to a tenancy of any corporeal hereditament, where neither the value of the premises nor the rent exceeds 50l. a year (f), has expired or has been determined by landlord or tenant by notice to quit, and the tenant, or any person holding or claiming under him, neglects or refuses to deliver up possession, possession of the premises may be recovered upon a plaint entered by the landlord (g) in the county court of the district in which the premises The section only applies where there is the ordinary relation of landlord and tenant existing (i). In the County Courts Act, 1856 (k), s. 50, "legal notice" was mentioned (l), but under the Act of 1888 it is conceived that a notice in accordance with the agreement of the parties will determine the tenancy for the purpose of the 138th section, although it is not a strict legal An order made under the section is not conclusive as to title (m); but it is submitted that the jurisdiction of the county court is not excluded by a question of title being in dispute (n). The landlord can proceed in the county court notwithstanding that an action of ejectment brought by him is pending in the High Court (o); but he is liable to have the county court action struck out unless the High Court action is discontinued (p).

Sect. 139 of the Act of 1888 provides a summary procedure for the recovery of the premises of the value above mentioned when a half-year's rent is in arrear and no sufficient distress is to be found on the premises. On plaint entered by the landlord, and on proof of the matters mentioned in the section, the judge may order possession to be given to the landlord on or before such day, not less than four weeks from the hearing, as the judge thinks fit to name, unless within that period all the rent in arrear and the costs are paid into court

recover possession. Tenant holding over. 51 & 52 Vict. **4.** 43, s. 138.

Rent in arrear and no distress. Sect. 139.

(f) Where the rent is originally over 50l. a year, the case is not brought within the section by a verbal agreement to reduce the rent, there being no new demise: Crowley v. Vittey (1852), 7 Ex. 319.

(g) See sect. 186 of the Act.

(h) Ellis v. Peachy (1849), 18 L. J. Q. B. 137.

(i) Jones v. Owen (1848), 18 L. J. Q. B. 8; Banks v. Rebbeck (1851), 20 L. J. Q. B. 476.

(k) 19 & 20 Vict. c. 108.

(1) Friend v. Shaw (1887), 20

Q. B. D. 374.

(m) Campbell v. Loader (1865), 3 H. & C. 520, 525; cf. Hodson v. Walker (1872), L. R. 7 Ex. 55.

(n) See sect. 60 of the Act of 1888; and note that Kerkin v. Kerkin (1854), 3 E. & B. 399, and Pearson v. Glazebrook (1867), L. R. 3 Ex. 27, were decided on sect. 58 of the Act of 1846.

(o) Bissill v. Williamson (1861), 7 H. & N. 391.

(p) County Court Rules, 1903, Ord. 22, r. 11.

Action of ejectment.

The same Act provides that all actions of ejectment, where neither the value of the lands, tenements or hereditaments, nor the rent payable in respect thereof, exceeds 50l. a year (q), may be brought in the county court of the district in which the premises are situate. Up to the specified limit this action corresponds to the action to recover land in the High Court, and the procedure is regulated in a similar manner (r). A subtenant upon whom process is served must forthwith give notice to his immediate landlord, under penalty of forfeiting three years' rack-rent of the premises (s). The county court has jurisdiction where the dispute relates to a part of premises worth less than 50l. a year, although the entire premises are let at a rent exceeding that sum (t).

Appeal.

There is a right-of appeal in a county court action upon any point of law or equity, or upon the admission or rejection of any evidence; but in an "action for the recovery of tenements," leave to appeal is required if the yearly rent or value of the premises does not exceed 20l.(u). The phrase "action for the recovery of tenements" has been held to include an action for the recovery of land under sect. 59, so as to import the 20l. limit into an appeal in such an action (x), but it seems more probable that the limit only applies to actions under ss. 138 and 139 (y).

PROCEEDINGS BEFORE JUSTICES.

In certain cases possession may be recovered by proceedings before justices under the Small Tenements Recovery Act, 1838(z),

(q) As to ascertaining the rent for this purpose, see *Elston* v. Rose (1868), L. R. 4 Q. B. 4; Brown v. Cocking (1868), L. R. 3 Q. B. 672.

(r) See County Court Rules, 1903, Ord. 4, r. 1 (as to joining other causes of action); Ord. 7, r. 24 (service where possession is vacant); Ord. 10, r. 4 (letting landlord in to defend); Ord. 9, r. 6 (admission of title); Ord. 10, r. 5 (limiting defence to part of property).

(s) Sect. 140 of the Act of 1888.

- (t) Stolworthy v. Powell (1886), 55 I. J. Q. B. 228; Rutherford v. Wilkie (1879), 41 L. T. 435.
 - (u) Sect. 120 of the Act of 1888.
- (x) E. of Shrewsbury v. Garfield (1891), 60 L. J. Q. B. 765.
 - (y) See the notes on the sections

referred to in the text in the Yearly

County Court Practice.

(z) 1 & 2 Vict. c. 74. The procedure of this statute is applied by the Inclosure Act, 1845 (8 & 9 Vict. c. 118), s. 111, to the recovery of possession of allotment gardens let under that Act, and by the Allotments Extension Act, 1882 (45 & 46 Vict. c. 80), s. 12, to allotments under this latter Act. It also applies to allotments under the Allotments Act, 1887 (50 & 51 Vict. c. 48), possession of such allotments being recoverable under sect. 8 (1) by the sanitary authority as landlords, in the same manner as in other cases of landlord and tenant. By the Grammar Schools Act, 1840 (3 & 4 Vict. c. 77). s. 19, it is extended to the recovery

or, if the premises are deserted, under the Distress for Rent Act, 1737 (a).

By the first section of the Act of 1838 it is enacted as follows:—

"When the term or interest of the tenant of any house, land, or other corporeal hereditaments held by him at will or for any term not exceeding seven years, either without being liable to the payment of any rent, or at a rent not exceeding the rate of 201. a year, and upon which no fine shall have been reserved or made payable, shall have ended or shall have been duly determined by a legal notice to quit or otherwise, and such tenant, or (if such tenant do not actually occupy the premises, or only occupy a part thereof,) any person by whom the same or any part thereof shall be then actually occupied, shall neglect or refuse to quit and deliver up possession of the premises or of such part thereof respectively, it shall be lawful for the landlord of the said premises, or his agent, to cause the person so neglecting or refusing to quit and deliver up possession, to be served (in the manner hereinafter mentioned) with a written notice in the form set forth in the schedule to this Act (b), signed by the

of school premises from a dismissed master; by the Charitable Trusts Act, 1860 (23 & 24 Vict. c. 136), s. 13, to the recovery of charity premises held over by an officer or recipient of the benefit of a charity; and by the Admiralty Lands and Works Act, 1864 (27 & 28 Vict. c. 57), s. 12, to the recovery of lands purchased by the Admiralty. As to recovery of possession against tenants of parish lands, see the Poor Relief Act, 1819 (59 Geo. 3, c. 12), ss. 24, 25; R. v. JJ. of Middlesex (1839), 7 Dowl. 767; Wildbor v. Rainforth (1828), 8 B. & C. 4; Appleton v. Morray (1860), 8 W. R. 653. The jurisdiction of the justices under this last Act is not ousted by a claim of title: Ex parte Vaughan (1866), L. R. 2 Q. B. 114. As to reviewing the decision of the justices under these statutes, see R. v. Bolton (1841), 1 Q. B. 66. As to recovery of possession of land which is to be inclused under the Inclosure Act, 1845 (8 & 9 Vict. c. 118), see the Inclosure Act, 1852 (15 & 16 Vict. c. 79), s. 13, and Chilcote v. Youklon

(1860), 3 E. & E. 7. (a) 11 Geo. 2, c. 19, s. 16. (b) This is Form No. 1 in the schedule to the Act. It is headed "Notice of owner's intention to apply to justices to recover possession," and is as follows:—

"I, — [owner, or agent to —, the owner, as the case may be], do hereby give you notice, that unless peaceable possession of the tenement [shortly describing it] situate at ——, which was held of me, or of the said - [as the cuse may be], under a tenancy from year to year, or [as the case may be], which expired [or was determined] by notice to quit from the said —, or otherwise as the case may be], on the —— day of ——, and which tenement is now held over and detained from the said —, be given to —— [the owner or agent] on or before the expiration of seven clear days from the service of this notice, I, —, shall on — next, the — day of —, at — of the clock on the same day, at ---, apply to her Majesty's justices of the peace acting for the district of —— [being the district, division or place in which the said tenement, or any purt thereof, is situate], in petty sessions assembled,

1 & 2 Vict. c. 74, s. 1. If tenant at rent not exceeling 201. a year upon expiration or determination of his interest refuses or neglects to deliver up possession, landlord may serve him with notice of his intention to proceed under this Act.

If tenant does not appear before justices and show cause wny possession should not be delivered up, on proof by landlord of certain facts. justices may issue warrant directing constables to give possession of premises to landlord.

said landlord or his agent, of his intention to proceed to recover possession under the authority and according to the mode prescribed in this Act; and if the tenant or occupier shall not thereupon appear at the time and place appointed, and show to the satisfaction of the justices hereinafter mentioned reasonable cause why possession should not be given under the provisions of this Act, and shall still neglect or refuse to deliver up possession of the premises, or of such part thereof of which he is then in possession, to the said landlord or his agent, it shall be lawful for such landlord or agent to give to such justices proof of the holding and of the end or other determination of the tenancy, with the time or manner thereof, and, where the title of the landlord has accrued since the letting of the premises, the right by which he claims the possession; and upon proof of service of the notice, and of the neglect or refusal of the tenant or occupier, as the case may be, it shall be lawful for the justices acting for the district, division, or place within which the said premises, or any part thereof, shall be situate, in petty sessions assembled, or any two of them (c), to issue a warrant under their hands and seals to the constables and peace officers of the district, division, or place within which the said premises or any part thereof shall be situate, commanding them, within a period to be therein named, not less than twenty-one nor more than thirty clear days from the date of such warrant, to enter (by force if needful) into the premises, and give possession of the same to such landlord or agent."

The foregoing section does not protect the applicant from an action for unlawful entry (d), nor does it affect the outgoing tenant's rights under the custom of the country or otherwise (e).

to issue their warrant directing the constables of the said district to enter and take possession of the said tenement and to eject any person therefrom.

"(Signed) —,
"[owner or agent].
"To Mr. —."

As to the sufficiency of the notice, see *Delaney* v. Fox (1856), 1 C. B. N. S. 166. As to service of the notice, see sect. 2 of the Act.

(c) A stipendiary magistrate may exercise alone any jurisdiction exercisable by two justices: Stipen-

diary Magistrates Act, 1858 (21 & 22 Vict. c. 73), s. 1; and so may the Lord Mayor or any alderman of the city of London sitting at the Mansion House or Guildhall: Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 34.

(d) Under sect. 3 the tenant may procure the execution of the warrant to be stayed until he has sued the applicant for trespass. See Darlington v. Pritchard (1842), 4 M. & Gr. 783; Flitters v. Allfrey (1874), I. R. 10 C. P. 29.

(e) Proviso to sect. 1.

But the justices and the constable issuing and executing the warrant are protected (f).

The statute only applies where there is the relation of landlord and tenant between the parties (g). A tenant cannot for the purpose of making his rent exceed 201., and so excluding the statute, reckon sums not properly rent which he has undertaken to pay, such as rates and taxes for another part of the premises (h). Where the tenancy and its determination and the tenant's refusal to quit are proved, the jurisdiction of the justices is not ousted by the tenant setting up the title of a third person (i). It is essential that the warrant shall be to a constable or police officer, and the subsequent proceedings justifying the entry must allege this (k). The issue of the warrant does not abridge the lessor's common law right of entry, and he may exercise such right within the twenty-one days of grace during which the warrant cannot be enforced (l). Where a magistrate had made an order for a warrant to issue, but suspended it for ten days, with an intimation that, if the tenant did not go out within the ten days, the warrant would issue, it was held that the Act did not empower the magistrate to make such an order (m).

For the case of deserted premises, the 16th section of the Distress for Rent Act, 1737, provides as follows:—

"If any tenant holding any lands, tenements, or hereditaments at a rack-rent, or where the rent reserved shall be full three-fourths of the yearly value of the demised premises, who 11 Geo. 2, shall be in arrear for one half-year's (n) rent, shall desert the demised premises (o), and leave the same uncultivated or unoccupied, so as no sufficient distress can be had to countervail the arrears of rent, it shall and may be lawful for two or more demised justices of the peace of the county, riding, division, or place

In case of deserted premises. c. 19, s. 16. If tenant owing halfyear's rent desert the premises, so

- (f) Sect. 5. It is doubtful whether this section protects a person acting in aid of the constable: Edmunds v. Pinniger (1845), 7 Q. B. 558; and as to the applicant's liability in case of irregularity in the proceedings, see sect. 6: Delaney v. Fox (1856), 1 C. B. N. S. 166.
- (g) Brown v. Newmarch (1875), 40 J. P. 212; Webb v. Fordred (1868), 32 J. P. 804.
 - (h) Re JJ. of Richmond (1893), 10 L. R. 68.

- (i) Rees v. Davies (1858), 4 C. B. N. S. 56.
- (k) Jones v. Chapman (1845), 14 M. & W. 124.
- (l) Jones v. Foley (1891), 1 Q. B. 730.
- (m) Reg. v. Hopkins (1900), 64 J. P. 454.
- (n) "Half-year's" was substituted for "year's" by 57 Geo. 3, c. 52.
- (o) See Ex parte Pilton (1818), 1 B. & A. 369.

sufficient distress can be found, landlord may request two justices to come and view the same. And to affix on premises notice of time at which they will take second view. If tenant at such second view do not appear and pay rent and there is no sufficient distress, justices to put landlord in possession and demise to be thenceforth

void.

(having no interest in the demised premises) at the request (p) of the lessor or landlord, lessors or landlords, or his, her, or their bailiff or receiver, to go upon and view the same (q), and to affix, or cause to be affixed, on the most notorious part of the premises notice in writing what day (at the distance of fourteen days (r) at least) they will return to take a second view thereof; and if upon such second view the tenant, or some person on his behalf, shall not appear and pay the rent in arrear, or there shall not be sufficient distress upon the premises, then the said justices may put the landlord or landlords, lessor or lessors, into the possession of the said demised premises, and the lease thereof to such tenant, as to any demise therein contained only, shall from thenceforth become void."

An appeal may be made from the decision of the justices to judge of assize (s); but, although the order of the justices is reversed, an action of trespass for the eviction does not lie against either the justices, the constable, or the landlord, provided, as to the landlord, that he has not misled the justices (t).

(p) The request or complaint need not be on oath: Basten v. Carew (1825), 3 B. & C. 649.

(q) Under the Metrop. Police Courts Act, 1840 (3 & 4 Vict. c. 84), s. 13, a metropolitan police magistrate is not required to view the premises; he may send a constable instead, in manner specified in the section. But this exemption does not extend to the Lord Mayor or an alderman sitting at the Mansion House or Guildhall: Edwards v. Hodges (1855), 15 C. B. 477.

(r) I.e., clear days: Creak v. Justices of Brighton (1858), 1 F. & F. 110.

(8) Sect. 17. See R. v. Sewell (1845), 8 Q. B. 161; R. v. Traill (1840), 12 A. & E. 761.

(t) Ashcroft v. Bourne (1832), 3 B. & Ad. 684 (where the justices were overruled on the fact of desertion); Basten v. Curew, supra. As to mandamus to compel the magistrates to deliver possession, see Exparte Fulder (1840), 8 Dowl. 535.

```
ABANDONED PREMISES,
    entry of landlord upon, at expiration of lease, 569
    proceedings before justices for recovery of, 581
ABANDONMENT OF DISTRESS,
    quitting possession of goods does not necessarily operate as, 293
    tenant may retake abandoned distress, 295
ABATEMENT OF RENT,
    agreement for, 106
    specific performance with, 116
ABUTTALS, construction of, 133
ACCEPTANCE,
    by bringing action, 104
    complete when letter posted, 104
    of new lease, when implied surrender, 488, 489, 490
      offer, 103, 104, 122
      rent from tenant holding over, 95
           in lieu of double rent, 479
           under agreement for lease, 94
                 void lease, 94
           when waiver of double value, 568
                           forfeiture, 500
                           notice to quit, 479
      third person as tenant with consent of prior tenant, 490
      undertenant as tenant by lessor, 491
    stamping, 122
    unconditional and unequivocal, 103, 108
ACCIDENT,
    fire, 333
    inevitable or unavoidable, 210
    to stranger, 335
ACCIDENTAL DEFECT IN PREMISES, liability of landlord for,
      334, 335
ACKNOWLEDGMENT,
    does not require lease stamp, 175
    of lease by married woman, 14, 15, 16, 18, 20
    want of, 184
    of title, 573
                            (1)
```

```
ACQUIESCENCE,
     delay amounting to, 117
     in breach of covenant, 163, 367
        irregularity of notice to quit, 480
 ACREAGE RENT, 194, 197, 212
 ACTION,
     acceptance of agreement by bringing, 104
     continuing cause of, 405
     for breach of covenant, 163, 347
        damages for breach of agreement to let, 115, 354
        double rent, 568. See Double Rent.
        double value, 313, 566. See Double Value.
        excessive distress, 287, 288
        fraudulent removal of goods, 275
        illegal distress, 313
        irregular distress, 297
        penalty, 163
        pound-breach, 290, 294, 295
        recovery of land, 574, 576. See LAND.
        rent, 226, 244, 329. See RENT.
        replevin, 309
        specific performance, 116
        trespass, 192, 284, 291, 298, 305, 309, 313, 351, 399, 406, 582
        use and occupation, 192, 247, 330, 415. See Use and
          OCCUPATION.
        waste, 352.
    of ejectment, 192, 308, 574, 576.
                                      See LAND.
    on covenants, parties to, 160.
    to recover possession, 215, 574. See Possession.
ADDITIONAL RENT, 164, 219
    construed as a penalty, 164
    for hay sold off, 372
        improvements, 219
    on breach of covenants, 227
        distress for, 219
    reservation of, 227
    whether a penalty, 227
Adhesive Stamp,
    penalty for not affixing before execution of instrument, 180
    when duty on lease may be denoted by, 175, 176, 179
"ADJOINING," meaning of, 361
Administration, restraint on distresses in certain cases of, 325
Administration Action, effect of judgment in, 61
ADMINISTRATOR,
    distress by, 254
    lease by, 60-62
          administrator ad colligenda bona defuncti, 60
```

ADMINISTRATOR—continued. lease by—continued. administrator durante absentia, 60 administrator durante minori ætate, 60 • with option of purchase, 60 liability of, for rent and upon covenants in lease, 452 underlease by, 60. And see Executors ADMINISTRATOR OF CONVICT, convict's property vests in, 21, 461 leases, sales, etc., by, 21, 461 Admissions, by tenant, evidence of time of commencement of tenancy, 470 Advowson, lease of, now prohibited, 2, 126 AGENT, appointed by infant to make lease, 8 appointment of, to contract, 110 execute lease by deed, 70 authority of, to contract for letting of land, 110 determine tenancies, 476 lease, 71 clerk of, signature of memorandum by, 110 duty of, 71 house, 71 lease by, 70 mode of execution of, 71 lease to, by principal, 73 mistake due to, 120 notice to quit by, 475 occupation by, 88 party to memorandum in writing, 108, 110 payment or tender of rent to, 224 by cheque, 243 effect of, as evidence of principal's title, 244 personal liability of, 72 revocation of authority of, 224 AGISTMENT, cattle at, tender of rent by owner of, 299 when they may be distrained, 267 AGREEMENT, acceptance of, 103 binding, 103 certainty of, 118 collateral, parol evidence of, 129 completeness of, 117 executed distinguished from executory, 122 executory, effect of, where tenant not to be disturbed while rent paid, 150 (3)

```
AGREEMENT—continued.
    hardship of, 119
    injunction in aid of, 122
    made as an escrow, 111
    mere, without words of present demise, 78
    mutuality of, 117
    new lease under power, for, 54
    not to be performed within a year, 129
    parol, 105–113, 129
    partly relating to land, 106
    remedies for breach of, 115, 116
    to let, before and since Judicature Acts, 79-81
    unfairness of, 119
    using words of present demise, 79
    underlease, for, 114
    unstamped, 122, 123
AGREEMENT FOR LEASE, 78, 103-123, 189. And see Contract.
    assignable, 419
    building, 80, 81, 116, 119
    by copyholder, 119
       parol, 111
    certainty of, 118
    completness of, 117
    constituted by offer and acceptance, 103
    effect of, in county court, 82
    entry under, 81
    for future lease, 80
    how distinguished from lease, 78
         to be made, 103
    instances of, 79
    is a contract within s. 4 of Statute of Frauds, 105
    liability for rent under parol, 106
    may control lease granted under it, 126
    occupation under, effect of, 91
    parol variation of, 106, 120
    parties to, 108, 109
    payment of rent under, effect of, 81
    present effect of, 95
    proof of subsequent, 121
    remedies for breach of, 115
         action for damages, 115
                   specific performance, 116, 125
    rights of intended lessee under, 113
           as to title, 113
           as to covenants, 114
    stamp on, 122, 123
           counterpart of, 123
    subject to condition precedent, 117
               formal contract, 105
    sums reserved by way of rent on, 219
                             (4)
```

AGREEMENT FOR LEASE-continued. where no stipulation as to covenants, 114 within Statute of Frauds, 104 AGRICULTURAL FIXTURES, compensation for, 524 right to remove, at common law, 522 statutory right to remove, 522, 523 under Agricultural Holdings Acts, 523 AGRICULTURAL HOLDING, "best rent." 43 dispute as to distress on, 279, 314 length of notice to quit, 467 limitation of distress on, 279 resumption of possession of part of, 474 service of notice to quit, 477 tender of rent by owner of live stock agisted on, 299 AGRICULTURAL HOLDINGS ACTS, 1883 AND 1900 allotments, 558-560 appeals, 547, 548 application of "capital money," 555 appointment of guardian or next friend, 553 arbitration procedure under Act of 1900...544 award, 544, 547, 549, 550, 552 before one arbitrator, 547, 548 two arbitrators, 547, 548, 551 bringing in other claims, 546 costs, 550 false evidence in, 548 forms, 550, 551 jurisdiction over, 545 mode of arbitration optional, 544 non-applicability of Arbitration Act, 1889, to, 548 rules regulating, 548 stating case for opinion of county court, 547, 549 ascertainment of amount of compensation, 541 assignment of statutory charges, 556 avoidance of agreements inconsistent with, 542 " best rent," 557 " blaes," 539 Board of Agriculture, 545, 548, 551, 554, 556 rules, 548 changes of tenancy, 543 charge upon holding, 545, 551, 555, 556 compensation for improvements, right of tenant to, 537 outside the Acts, 542 consent of landlord to improvement, 540 to payment by incoming to outgoing

tenant, 542

5

AGRICULTURAL HOLDINGS ACTS, 1883 AND 1900—continued. cottage gardens, 558-560 county court, control and jurisdiction of, 544, 545, 547, 548, 549, 553 costs of proceedings in, 553 Crown and Duchies lands, application of the Acts, to, 557, 563 definitions, 537 determination of tenancy, 537, 538, 545, 546 distress for rent, 279, 299 ecclesiastical and charity lands, application of the Acts to, 557 executors of deceased landlord, charge in favour of, 545, **554** " final notice to quit," 543 first schedule to Act of 1900...538 Part I. (consent of landlord), 538, 540 Part II. (notice to landlord), 539, 540 Part III. (no consent or notice required), 539. 541 form of claim of compensation, 546 High Court, jurisdiction of, 544, 548 improvements made in last year of tenancy, 543 specified in first schedule to Act of 1900...538 land charge, 555, 561 landlord himself tenant of holding, 555 limited owner, powers of, 557 manures, as to, 542, 543 market gardens, as to, 542, 562, 563 meaning and "designation" of "landlord," 538, 545, 557 "tenant," 537, 543, 544, 545, 557 notice of landlord's claim against tenant, 546 to landlord of intended improvement, 540, 541 "particular agreement in writing," 541 payment by incoming to outgoing tenant, 542 recovery of compensation, 547, 553 removal of fixtures, 523, 521 saving of common law rights, 557 second schedule to Act of 1900...548 Part I. (single arbitrator), 548 Part II. (two arbitrators), 551 separate award, 547 service of notices under, 477 substituted compensation, 540, 541, 542 award in cases of, 552 Tenants' Compensation Act, 1890, provisions of, 560-562 time for claiming compensation, 545 "warping" of land, 538 what holdings the Acts apply to, 537 where landlord is a trustee, charge and recovery of compensation, 556

6

AGRICULTURAL LAND, description of, in lease, 132 exemption of occupiers of, from rates, 383 situate on banks of stream, 412 usual covenants in lease of, 155, 156

ALIEN, lease by or to, 20, 21

ALLOTMENTS,

compensation on compulsory hiring of land by parish council for, 558 compensation to outgoing tenants of, 558-560 failure of sanitary authority in duty as to, 35 letting of charity lands for, 39 letting of, by parish council or meeting, 35 by public authority, 34 recovery of possession of, 578 removal of buildings from, 520 fruit and other trees from, 35, 520

ALTERATIONS,

enforcement of covenant against, 351 expenditure in, 112, 113 in lease after execution, effect of, 184 in relation to waste, 350, 351 of agreement for yearly tenancy, 185 tenant not liable for, 336

Ambassador, goods of, privileged from distress, 266 rates of house occupied by, 388

AMBIGUITY,

parol evidence to remove, 128

Animals, 260, 261. See Cattle. feræ naturæ cannot be distrained, 261

A NNOYANCE,

covenant against, 361, 362

APPORTIONMENT

of conditions, 449, 503

APPORTIONMENT OF RENT,

distress for apportioned rent, 248, 254 in respect of estate, 238

how made, 238, 239 no apportionment as between land and goods, 240 not of personal liability, 240 not where lessee cannot obtain possession of part, 239 on grant or devise of part of reversion, 238 on loss of part of land from natural causes, 239 on severance of reversion by death of lessor intestate, 238 on tenant's losing possession of part of premises (otherwise than by wrongful eviction), 239

where land taken for site for school, 240

APPORTIONMENT OF RENT-continued.

in respect of estate—continued.

where land taken under Church Building Acts, 240 where part of lands taken under Lands Clauses Act, 240 where tenant quits part of holding under Agricultural Holdings Acts, 240

in respect of time, 240

apportioned rent, when payable. 241 effect of Act of 1870...241, 463 in bankruptcy, 242, 325 in winding up, 328 liability for apportioned part, 242, 463 not in favour of wrongful evictor, 242

APPRAISEMENT OF DISTRESS, 288, 295, 296
action for selling goods distrained without, 315
growing crops, in case of, 300
memorandum of appraisement, 300
stamp on, 301
only prima facie evidence of value, 288
when now necessary, 295, 300
who may be appraisers, 300

APPRAISERS, sale to, of goods distrained, 304

APPROVAL OF HEAD LESSOR, as condition precedent, 414

APPURTENANCES,

meaning of, 136 to a house, what may pass as, 136 to land, what may pass as, 136

ARBITEARY refusal to permit assignment, 423, 424

ARBITEATION,

counterclaim for, 544 under Agricultural Holdings Act, 1900...544 when tenant's only remedy, 544

ARBITRATOR,

misconduct of, 549
powers and duties of, under Agricultural Holdings Acts,
549-552

ARREAR, when rent is in, 249

ARREADS OF BENT, distress for, 249, 254
due before assignment of reversion, 449
go to landlord's executor, 450
limitation on recovery of, 278
payable on execution against tenant, 317, 321

ARTIZANS' DWELLINGS, leases of land for, 33

ASSENT,

by executor to bequest of term, 450 effect of, 450

8)

```
ASSENT—continued.
    by executor to bequest of term-continued.
       evidence of, 451
       where bequest is to executor, 451
    by tenant, to grant of new lease to third person, 490
ASSENT TO AGREEMENT,
    subject to formal contract, 104
    unequivocal, 103
" Assessments," 388, 389, 390
Assign, Right to, 419. See Assignment.
Assignme of Reversion.
    action by, 111
    distress by, 245
    rights in relation to breaches before assignment, 449, 450
ASSIGNEE OF TERM.
    acceptance of, as tenant by lessor, 433, 441
    application for new lease by intending, 425
    bankrupt, 443, 456
    commencement of tenancy of, 471
    equitable liability of, 431, 432
    in part of the premises, 431
    liability of, to lessee, 441
                      on indemnity, 442
    liability of, to lessor,
        for rent, 430, 456
        on covenants, 431, 432, 441
            covenants which run with land, 431, 433, 442
        when assignment is from a joint lessee, 431
        when assignment is without licence, 425
    reassignment, effect of, on liability, 440
                  to whom it may be made, 440, 441
    rights of, against assignor as to title, 428
                     lessor on covenants, 431
    successive, 442
    taking as mortgagee or trustee, 432
    who is, 420, 421, 432
Assignment.
    agreement for, 442
    breaches before, 449
    by estoppel, 431
    by tenant at will, 420
    by way of security, 428
    charges under Agricultural Holdings Acts, of, 556
   chattel interest, of, 428
    chose in action, of, 438
    consent to, omission to ask, 421, 424
               arbitrarily withholding, 423
    contract for, 423, 426, 427
```

```
Assignment—continued.
    covenant against, 151, 156, 420
        applies to reassignment to original lessee, 426
        breach of, 420, 421, 422, 495, 510
        construction of, 420, 495
        continuing breach of, 503
        damages for breach of, 425
        on whom binding, 421, 426
        what acts are not breaches of, 421
    covenant to employ a particular person for making, 429
    covenants running with land after, 434
    creditors' deed, in, 432
    determination of tenancy at will by, 464
    distress after, 250
    effect of, 426, 441, 445
    equitable mortgagee not bound to take, 432
    for unlawful purpose, 443
    how distinguished from underlease, 413, 414
    injunction against, 426
    involuntary, 420, 450
    legal, 421, 432
    lessee may be restrained from, 420, 426
    liability of lessee after, 441
    licence to assign, 420
        effect of, 426
        payment for, 425
    mode of making, 428
        assignor may assign directly to himself and another, 429
        deed necessary, 428
    necessary for covenants to run with land, 421
    of parol tenancy, 433
   of part of the premises, 431
    of rent, 226
    of right of indemnity, 443
    parol agreement for, 426
    passing the legal estate on, 429
    payments by way of rent reserved on, 220, 428
    proviso against, 420
    registration of, 429. See REGISTRATION.
    right of, 419
    stamp on, 428
    tenant-right, of, 535
    tenancy from year to year, of, 429
    to railway company, 421
    upon bankruptcy of lessee, 420, 450. See BANKRUPTCY.
          conviction of lessee for treason or felony, 461
         death of lessee, 450. See DEATH
    when void, 420
    without consent, forfeiture for, 425, 503, 510
Assignor of Lease, duty of, to procure licence, 424
```

(10)

```
Assigns.
    covenants which run with land only when assigns are named,
    does not ordinarily include underlessees, 364
    effect of naming, or not naming, in covenants, 161, 162, 367,
    enforcement of restrictive covenants by, 439
    successors in business, 366, 438
" ASSUBANCE,"
    capable of registration, 430
    meaning of, in Mortmain Acts, 36
ATTESTATION
    of leases by deed, 183
    under powers to lease, 57
ATTORNEY appointed by married woman, 19-29
ATTORNMENT,
    clause in mortgage deed, 83, 84, 248, 251
        power of distress under, 81, 218, 251, 328
        recovery of possession under, 85
    creation of tenancy by, 83, 84, 415
    evidence of landlord's title, 83, 243
    meaning of, 83
    on grant of reversion, 83, 444
    stamp on, 83
    surrender by, 490
    virtual, 243
    where reversion assigned by operation of law, 256
AUCTIONEER.
    authority of, to sign memorandum, 110
    goods in hands of, for sale, protected from distress, 259
    payment of rent by, 245
AUTHORITY
    of agent, 110, 224
    to distrain, 281, 282, 297
    to pay rent to third person, 226, 253
AVERAGE CLAUSE in mining leases, 205
AWAY-GOING CROP,
    custom to leave in barns, 276
    possession for purpose of, 535
    right to, 533
BAIL: FF.
    county court, of, 280, 321
        fees on execution, 322
        liability of, in execution, 322
        notice to, that rent is due, 321, 322
    power of, to let, 71
    ratification of contract of, 71
                              11 )
                                                     QQ
```

BALLIFF-continued.

```
to distrain, 255, 256
        certificate of, 280
             production of, 307
        employment of, 280
        indemnity to, by landlord, 282
        landlord's liability for acts of, 281
        liability of, to landlord, 282
        must give copy of charges, 307
        tender of rent to, 298
        sale by, to pay fees, 307
        warrant of distress, 281
BANKRUPT.
    effect of discharge of, 326
    order and disposition of, 248, 323
    specific performance not ordered against, personally, 121
    tenant for life, 70
BANKEUPT ASSIGNEE, claim for indemnity against, 443
BANKRUPTCY.
    does not put an end to contract to grant, or to accept, a lease, 121
    of assignee of lease, 456
    of landlord,
        when it determines tenancy at will, 464
    of tenant,
        commencement of, 324
        disclaimer of lease, 455. See DISCLAIMER.
        distress after commencement of, 321, 323
        does not affect rights of non-parties to bankruptcy, 456
        effect of, on user of produce, 374
        liability of surety, 457
        preferential debts in, 326
        proviso for re-entry upon, 172
        remedy of landlord for rent upon, 321, 323, 324
                year's rent under 8 Ann. c. 14...321
        set-off in, 457
        trustee in,
             assignment by, of right of indemnity, 443
                 where covenant against assigning, 421
             indemnification of, 455
             lease by, 73
             lease to, 73
             liability of, 454, 455
             may assign to a pauper, 455
             re-assignment by, 440
            release of, 455
             removal of trade buildings or fixtures by, 457, 528
            sale of produce by, 375
            specific performance against, 121
             using demised premises, 274
        vesting of leaseholds on, 454, 455
                               12 )
```

BATHS AND WASHHOUSES ACTS, leases under, 33 BEER.

agreements compelling lessees to purchase from lessors, 365 breach of covenant to purchase, 82, 438 exclusive right to supply, how enforced, 438

BEERSHOP, covenant against use of house as, 360

BENEFICED CLERGY, occupation leases to, 30

BENEFICES, letting of residences attached to, 29

BEST RENT.

in lease by mortgagor or mortgagee in possession, under Conv. Act, 1882...66, 70

in lease by tenant for life, 43, 70

in lease under power, 53, 56

in lease under Settled Estates Act, 1877...50

in relation to Agricultural Holdings Acts, 557

BEQUEST of leaseholds, executor's assent to, 450, 451

BILL OF EXCHANGE, payment of rent by, 242

BILLS OF SALE ACTS, effect of, on attornment clauses in mortgages,

power of distress, 84, 211

BISHOPS, leases by, 23, 24, 25, 26. And see ECCLESIASTICAL CORPORATIONS.

BOARD OF AGRICULTURE,

jurisdiction and powers of, 545, 548, 551, 554, 556 rules published by, 548, 550, 551

BOARD OF EDUCATION, powers of, 37

BOUNDARIES.

jurisdiction to ascertain, 377 obligation of tenant to keep up, 376

Breach of Agreement, remedies for, 115, 116

BREACH OF COVENANT, 163, 510. And see COVENANT.

BREACH OF TRUST,

by granting lease with option of purchase, 48 lease bad in equity, 51

BRICKFIELD, lease of, 208, 375

Building, removal of, by tenant, 519, 522, 524, 530

BUILDING AGREEMENT,

effect of, 80, 81

materials brought on to the ground under, 81 specific performance of, 116, 119

(13)

```
BUILDING COVENANTS, enforceable notwithstanding surrender, 493
BUILDING ESTATE.
    enforcement of restrictive covenants as to, 367, 438, 439
BUILDING LEASE,
    agreement for, 413
    by ecclesiastical corporation, 27, 28
    by mortgagor or mortgagee, 66
    by tenant for life, 41, 46
    of charity lands, 38
    of copyhold lands in Middlesex, registration of, 65
    repairing lease not good as, 52
    reserving the minerals, 52
    under Settled Estates Act, 1877...50
    with option of purchase, 23
BUILDING SCHEMES, 432
BUILDING SITES, right to sell for, 143
Building Societies, leases by and to, 36
BUILDINGS,
    additions to or alteration3 in, 42
    leases of, 2
Busnes,
    exception of, 143
    property in, 378
BUSINESS,
    covenants as to carrying on, 357
                   permitting, 359
BUTCHER, covenant against use of premises for trade of, 359
CANCELLATION OF LEASE, does not operate as surrender, 491
CAPITAL MONEYS.
    application of, 41, 42, 555
    fine or premium, 43
    payment of costs, &c., out of, 49
Carriages, at livery, whether they may be distrained, 260
CATTLE,
    distress of,
        supply of food and water to, 293
         when distrainable, 260, 264, 267
              at agistment, 267, 299
              feeding on common, 271
              kept to consume produce sold by sheriff to be con-
                sumed on land, 233
              seen on demised premises, by landlord coming to-
                distrain, 271
        where to be impounded, 292
                            (14)
```

```
CATTLE-continued.
    leases of, 405
        rights and liabilities of lessee and lessor, 405
             to whom cattle dying during term belong, 405, 405
                      young produced during term belong, 406
    trespass by, 375
CATTLE-PLAGUE RATE, one-half of, may be deducted from rent,
      383
CERTAINTY.
    as to amount of rent, 151
         commencement of lease, 145
         duration of lease, 147
    of agreement, necessary for specific performance, 118
    requisite in making a lease for a term of years, 99
             in notice to quit, 474
CESTUI QUE TRUST,
    lease by, to trustee, 73
    notice to quit by, 476
    occupation by, 93
    of trustee-lessee, 59, 93. 432
    when agent of trustee, 93
    when tenant at will to trustee, 93
CESTUI QUE VIE, 484
    evidence of life of, 148
    proceedings for production of, 483
CHAMBERS IN INNS OF COURT, instruments relating to leases of
      185
"CHARGED UPON THE PREMISES," effect of, in covenant to pay
      rates and taxes, 395
CHARGES, 388, 392, 395
    apportionment of, 395
CHARITABLE USES.
    leases by trustees for, 37, 38
          to trustees for, 39, 40
CHARITY COMMISSIONERS, consent of, to leases of charity lands,
      37, 38
CHARITY LEASE, setting aside, 38, 39
CHATTELS,
    leases of, 3, 176, 458
          payments by way of rent reserved upon, 218
          with land, at entire rent, 457
    what, are fixtures, 512. See FIXTURES.
CHEQUE, payment of rent by, 243
CHURCHWARDENS,
    distress by, 256
```

15)

taking land on lease, 34

CLIENT, lease by, to solicitor, 73

CLOSE, meaning of, 135

CLUB.

lease to trustees of, 59 user as a private club, 362

COAL.

agreement to take from specified colliery, 366 construction of covenants for payment of rent for, 205 exception of, 145 when it is "won." 201

COFFEE House, covenant against use of premises as, 358

COLLATERAL AGREEMENT, parol evidence of, 129

COLLATERAL COVENANTS, 401 do not bind assignee, 439

Colleges, leases by, 30

COLLIBRIES.

agreement to work, 210 injunction to restrain working of, 210

COMMENCEMENT OF LEASE OF TENANCY,
certainty as to, 145
construction of provisions as to, 146, 147
from what periods lease may be made to commence, 146, 147
from year to year, how to be ascertained, 470
to be fixed by memorandum of agreement, 108, 109, 110

Commission charged by estate agent, 190

COMMISSIONERS OF WOODS AND FORESTS, leases of Crown lands vested in, 31

COMMISSIONERS OF WORKS, leases by, 31

Committees of Lunatics, leases by, 11, 12, 13 renewal of leases by, 11

Common, Right of, establishment of, 402 lease of, 2, 125

COMMON, TENANTS IN,
action by, on covenants, 160
action for rent by, 64
distress by, 256
lease by, 63, 64, 160
to co-tenant, 63
liability of, to repair, 333
payment of rent to, 225

Commons, inclosure of, 376

```
COMPANY,
    director of, cannot distrain, 281
    distress against, in winding up, 326
    distress by mortgagee, in winding up, 328
    indemnity against, in winding up, 443
    land companies, assignment of charges to and by, 556
    lease of property of, with sanction of Court, 73
            undertaking of, 36
          in trust for, 327
          to company, 36
    power of, to hold lands, 36
           to lease and to take on lease, 36
    proviso for re-entry on winding-up of, 172, 173, 499
                         acting upon, 499
    removal of fixtures by debenture-holders of, 527
    sub-letting by, 86
    taking land under statutory powers, 447
    trustee of lease for, 36, 327. And see Corporation.
COMPENSATION,
    by public company taking land compulsorily, 447
    for away-going crops and tillages, 533, 534
    for improvements, 533, 536
         non-statutory, 533
         statutory, 536
             deduction of, from rent, 233
             as against mortgagee, 561
             in case of allotment, 558
                       agricultural fixtures, 524
                       cottage garden, 558
                       market garden, 562, 563
         to outgoing tenant, by whom payable, 536, 561
    for tenant-right, 535
    for unexpired interest of yearly tenant, where land taken
      compulsorily, 99
    for use and occupation, or detention, of premises, 236
    on application for relief against forfeiture, 505, 507, 508
COMPLETENESS OF AGREEMENT, 117
COMPULSORY PAYMENTS, deduction of, from rent, 233, 234, 252
CONCURRENT LEASE, 191
    by ecclesiastical corporation, restrained, 26
CONDITION,
    apportionment of, 449, 503
    for forfeiture or against execution, 509
    forfeiture on breach of, 495
    how created, 495
    implied, 354, 356, 481
    of re-entry, 170
    precedent, 117, 159, 343, 404, 414, 526
        exercise of option, to, 165, 166
```

(17)

performance of covenant, when, 159

Condition—continued.
precedent—continued.

```
renewal of lease, to, 168
        valuation, when, 159, 536
CONFIDENTIAL RELATION, leases to persons standing in, 73
CONFIRMATION OF LEASE,
    made by infant, 7
             married woman not under statute, 19
             spiritual corporation sole, 24, 25, 26
             tenant in tail, 41
             under power, 56, 57
CONSENT.
    by co-owner, 9
    by landlord, to execution of improvements, 540
    by protector, 40
    by trustee of settlement, 41
    required by sect. 56 of Settled Land Act, 1882...4
    to assignment, 423, 426. See Assignment.
    to sub-letting, 115, 413, 414
CONSIDERATION.
    consisting partly of money payment or premium, 190
    for lease, 131, 132, 176
         effect of misstatement of, 178
    for transfer of an interest in land, 426
CONSTRUCTION.
    covenants generally, of, 158, 170
    exceptions and reservations, of, 141-145
    forfeiture clause, of, 495
    powers of re-entry, 170
            to resume possession of part of premises, 174
     reddendum, of, 150, 151
     restrictive, 357
     terms of description, of, 133
     written instruments, general principle of, 158
CONSUMPTION OF PRODUCE ON PREMISES, 368
CONTINUOUS
     breach of covenant, what is, 338, 358, 381, 503
         effect on, of receipt of rent or other acknowledgment of
           tenancy, 502
 CONTRACT
     assignability of, 419
     conclusion of, 103-105
     conditional, 118
     disclaimer of bankrupt's, 456
     for assignment, 426. See Assignment.
     formal, 105
     implied, 397
                               18)
```

```
CONTRACT—continued.
    one-sided, 118
    rectification of, 120
    requisites for enforcement of, 105
                  validity of, 103
    specific performance of, 120. And see Specific Performance.
CONVEYANCE,
    in sect. 6 of Conveyancing Act, 1881, includes a lease by deed,
    of land, what passes by, 138, 139
CONVICT.
    definition of, 461
    leases, sales, &c., of property of, by administrator, 21, 461
    property of, vests in administrator, 21, 461
Co-owner, 9, 63, 225
    consent of. 9
     deduction of arrears of rent as against mortgagee, 63
     distress for rent due from, 63, 256
    recovery of rent by, 225
       And see Joint Tenants and Common, Tenants in.
CO-PARCENERS,
    action of ejectment by, 64
     claim for rent by, 64
     distress by one of several, 255, 256
    lease by, 64
COPROLITES, 199
COPYHOLD ENFRANCHISEMENT RENT-CHARGE, deduction of, from
       rent, 232
COPYHOLDER,
     lease by, 64
         licence for, by tenant for life, 46, 49
         effect of, when without the lord's licence, 65, 66
         registration of, 65, 186
 COPYHOLDS,
     leases of, 50
     registration of leases of, 186
CORN.
     distress of, 258, 260, 261
         where to be impounded, 291
     rents, 217, 387
     sold by sheriff to be consumed on land, not liable to distress,
       263
 CORNWALL, lease of land of Duchy of, 32
 CORPORATION,
     aggregate, lease to, 30
                     by, to member, 30
     alienation of lands by, 21
                                 19
```

```
CORPORATION—continued.
    common seal, when dispensed with, 22
    compliance with statutory requirements in lease by, 23
    description of, in lease, 23
    ecclesiastical, 23. And see Ecclesiastical Corporations.
    effect of covenant for quiet enjoyment in lease by, 403
    generally can only contract under seal, 21
    holding charity lands, 38
    lease by agent of, 22
        by or to, how made, 21, 22, 23
         under seal of, needs no delivery, 182
    liability of, for use and occupation, 22
    municipal, 32. And see MUNICIPAL CORPORATIONS.
    option of purchase in lease by, 23
    power of, to take lease, 23
    ratification of lease by agent of, 22
    service of notice to quit on, 478
    sole, lease to, 30
    specific performance against, on ground of part performance, 22
    tenancy under, by payment of rent, 22. And see COMPANY.
CORPOREAL HEREDITAMENTS, leases of, 2, 125
CORRESPONDENCE.
    contract by, 107
    lease by, 131
Costs,
    application of capital moneys for payment of, 190
    "full costs of suit," meaning of, 313
    incidental to exercise of tenant for life's leasing powers, 49
    of arbitration under Agricultural Holdings Acts, 550
    of county court proceedings under same, 553
    of distress, 300, 306
         bailiff to give copy of charges, 307
    of investigating title, 116
       lease and counter part, 188
       how to be borne, 188
       more than one set, 188
       Remuneration Order, 189
       renewal of lease, 168
    third party taxation of, 188
    treble, 294
COTTAGE GARDEN, compensation to tenant of, 558-560
COUNTERCLAIM for arbitration, 544
COUNTERPART.
    by whom executed and kept, 180, 187
    costs of, 188
    custody of, 187
    effect of, where inconsistent with lease, 181
    evidence of execution of, 50, 182
                                20 )
```

```
COUNTERPART—continued.
    execution of, usually required under statutory or other power
       of leasing, 181
    on lease by tenant for life, 44
    presumptive evidence of execution of lease, 180
    stamp on, 180-182
         on counterpart of agreement for lease, 123
    time of execution of, 181
    witnessing execution of, 182
COUNTY COUNCILS,
    power of, to authorize compulsory hiring, 35
              to let in small holdings, 35
COUNTY COURT,
    action for double value in, 567
              ejectment in, 578
              recovery of land in, 576
           of replevin in, 310, 312
              registrar grants replevin, 310
           to recover possession after expiration of tenancy, 577
    appeal from, 578
    effect of agreement for lease in, 82
    execution in, 321, 322
    grant of bailiff's certificate by, 280
    jurisdiction of, in unlawful distress on agricultural holding,
                        279, 314
                     in specific performance, 82, 111
                     under Agricultural Holdings Acts, 544, 545,
                        547, 549, 553
    summary procedure in, 577
COUNTY RATES, construction of covenants relating to, 387
COURT.
    leases by the, under Settled Estates Act, 1877...49, 50
    sanction of leases by, 5, 9
COVENANT, 153-164
    absolute, for quiet enjoyment, 400
             to pay dead rent, 204
             to repair, 343
    assigns mentioned or not mentioned in, 367
    breach of, action for, 483
              acquiescence in, 163
              injunction against, 367
              relief against, 510
              service of writ out of jurisdiction, 347
    "by the lessee," in lease under Settled Land Act, 1882...43
    collateral, 401, 439
    conditional, 342
    construction of, generally, 158, 170
    construed against covenantor, 170
    continuing, 338, 358, 381, 502
    dependent or independent, 158, 159, 341, 404
                            (21)
```

```
COVENANT-continued.
    devolution of benefit of, 161
    difficulty or impossibility of performance of, 162
    disclosure of, 427
    express, 153
         against assignment, 154, 156, 420, 510. See Assignment.
         against alterations or new erections, 351
         against particular trades, 156, 358
                 underletting, 413
        as to cultivation of land, 155, 367
        as to trading with particular persons, 365
        as to trees, 379
        as to working of mines, 207-210
        for payment of rent, 153
        for quiet enjoyment, 159, 212, 399. See QUIET ENJOYMENT.
        for renewal, 159, 166. See RENEWAL OF LEASE.
        for title, in Ireland, 155
        not to incumber, 422
        to indemnify lessee on assignment of lease, 442
           insure against fire, 337, 380
           leave in repair, 340, 341, 345
           pay rates and taxes, 382, 386
           put into repair, 337, 338
           rebuild, 341, 345
           repair, 336, 375
                after notice, 341
                conditionally, 342
           yield up in repair, 339
                effect of, on removal of fixtures, 341, 529
           yield up possession, damages for breach of, 564
    how constituted, 153
    implied, 153, 397
    indemnity, of, 442, 443
    is an agreement under seal, 153
    joint or several, 159, 160
    legal, in lease by tenant for life, 43, 49
    mining licence, in, 214
    negative covenant, proviso for re-entry on breach of, 171
    no stipulation in agreement as to, 114
    observance in specie of, 122
    of indemnity, 417, 418
    ordinary remedy on, 163
    parties to action on, 160
    partly affirmative and partly negative, 438
    performance or observance of, 171
    personal only, 436, 439, 446
    "proper," 157
    restrictive, notice of, 416, 437, 440
         when binding in equity, 433, 437
                       on lessee of covenantor, 367
         when lost by acquiescence, 367
                                22
```

```
COVENANT-continued.
    restrictive of user by lessor, 359, 438, 439
    running with land, 431, 433-437, 442, 446
        application of doctrine of, 433
                                                     See REVER-
    running with reversion, 160, 161, 214, 444, 448.
    usual, 114, 154-157. See USUAL COVENANTS.
        against assignment, not usual, 154
        against particular trades, not usual, 156
    title, for, 397
    void for illegality, 163
             restraint of trade, 163
    where assigns named in, 161
                  not mentioned in, 431
CREDITOR'S DEED, effect of assignment in, 432
    away-going, 533
    growing, distress on, 260, 263. See Growing Crops.
    on allotments and cottage gardens, 559
    what, claimable as emblements, 531
CROWN.
    leases by, 31
        disclaimer of, 456
    leases of private estates of, 31
          taken on behalf of, 31
Crown Lands, 557, 563
CULTIVATION OF LAND,
    lessee's obligations as to, 367
    express agreements as to, 370, 371
    injunction to restrain removal of produce, 369
CUSTODY OF LEASE, who is entitled to, 187
Custom.
    as to away-going crops, 533
         charging landlord with expense of drainage, 533
         compensation for tillages, 533
         manure, 542
         meaning of "Lady-day," 221
         removal of things erected by tenant, 520
         rent becoming due in advance, 221
         using barns after expiration of lease, 276
         what trees are timber, 378
    excluded by express agreement inconsistent with it, or by
      implication, 369, 534
    evidence of, 534
    how established, 368, 369, 534
    implied obligation of agricultural tenant to cultivate accord-
      ing to, 368
                            (23)
```

```
CUSTOM-continued.
    incorporation of, in lease, 368, 369
    mining lease in accordance with local, 195
    not to sell produce off land, 373
    to leave away-going crops in barns, effect of, 276
    to put cattle on "summer leazes," 406
    to what tenancies applicable, 370
DAMAGES.
    for injury to surface, 200
    for loss of bargain, 115
    for non-delivery of possession, 564
    in action against sheriff, 320
    in action for breach of agreement to let, 115
                  breach of covenant for quiet enjoyment, 405
                                     not to assign, 425
                                      to repair, 338, 346, 417
                  illegal distress, 253, 309, 313, 314
                       circumstances of mitigation, 313
                  indemnity, 443
                  irregular distress, 316
                  use and occupation, 330
                  waste, 352
    in lieu of, or in addition to, specific performance, 121, 122
    in replevin, 309
    instead of injunction, 353
    liquidated, 163
    measure of, for breach of covenant, 163, 346, 347, 417
    misrepresentation, for, 130
    on disclaimer in bankruptcy, 460
    power of High Court to award, 121, 122
    treble, 295
     where agreement too uncertain for specific performance, 115
DATE,
    alteration or erasure of, 180
    of execution, 180
    of lease by deed, 131
    presumption of date of delivery, 131
DEAD RENT, 203, 208, 209, 210
DEAN AND CHAPTER, leases by, 25, 29
DEATH.
    of landlord or tenant, effect of, on tenancy at will, 464
   of lessee, 450
           liability of executor for rent and upon the covenants,
             452. See EXECUTORS.
    of lessor, 450
           recovery of arrears of rent due at, 254, 450
    of mortgagor, 465
DEBENTURE-HOLDERS,
    removal of fixtures by, 527
                            (24)
```

```
DECLARATION under Lodgers' Goods Protection Act, 1871...269
DEDUCTIONS FROM RENT.
    compensation under Agricultural Holdings Acts, 233
    compulsory payments, 233, 231, 252, 418
    copyhold enfranchisement rent-charge, 232
    land tax, 230, 383
    local improvement rates, 231
    mesne lessees, by, 232
    permitted by mistake, effect of, 230
    property tax, 229, 230, 383
    rent due to original landlord, 233, 418
    sewers rate, 231, 383
    tithe rent-charge, 232, 383
    underlessee, by, 418
DEED.
    assignment must be made by, 428
    construction of, by reference to plan, 133
    delivery of.
        as an escrow, 178
        when not necessary, 182,
    presumption of date of delivery of, 131
    when lease must be by, 124, 125, 126
DEFECTIVE STATE OF PREMISES, liability for, 394
DELAY,
    amounting to acquiescence, 117
    as a defence to action for specific performance, 120
    barring right to enforce restrictive covenants, 367
DRLIVERY
    of lease by deed, 182
    of possession by tenant, 564
DEMAND,
    of rates, 396
    of rent, 221
        before distress, 249, 250, 283
               re-entry, 497
                   how and when to be made, 497
                   when dispensed with, 498
                   where to be made, 498
        not necessarily a waiver of notice to quit, 480
        when a waiver of forfeiture, 501
    of possession or double value, 566
DEMISE.
    absolute, 175
    agreement taking effect as, 85
    as implying covenant for quiet enjoyment, 397, 398
    present, 150
    two subject-matters, of, 178
    words of present, 78, 79, 80
```

(25)

```
DEPOSIT OF LEASE AS SECURITY.
    not a breach of covenant against assignment, 422
    registration on, 429, 430
DEROGATION from grant, 399
DESCRIPTION.
    by reference to abuttals, 133
    legal meanings of terms of, 134
    in relation to signature of memorandum, 110
    of parties, 108, 109
    of property intended to be demised, 109, 132, 200
    rejection of erroneous, 133
DESERTED PREMISES, proceedings before justices for recovery of.
      581
DETERMINATION OF TENANCY, 462-511
    final, 499, 502
    modes of, applicable to particular kinds of tenancy, 462
         determination of tenancy at will, 463
                                  by sufferance, 462
                                  for life, 483
                                  for optional term, 482
                                  from year to year, 465
                                  of right of shooting, 466
    modes of, generally applicable, 483
        forfeiture, 494
        merger, 483
        surrender, 485
    parol agreement for, 486
    when lessor may sue for damages for breach of covenant
      after, 483
DIGNITIES cannot be granted for years, 3
DIRECTORS, resolution of, 110
DISABILITY, restrictions arising from, 3
DISCLAIMER,
    by infant, of lease, 10
    by trustees, 50
    of bankrupt's contract to sell leasehold property, 456
    of lessor's title,
        determination of tenancy on, 481
        forfeiture on, 494
    of lease by trustee in bankruptcy, 455
        affects entire property in demise, 457
        consequences of, 457
        Crown lease, 456
        effect of, 456, 457
        extension of time for, 455
        leave to disclaim, 458
            when required, 458
                               26)
```

```
DISCLAIMER-continued.
    of lease by trustee in bankruptcy-continued.
        notice calling upon trustee to decide as to, 459, 460
        proof for damages on, 460
         terms of, 458
         vesting order on, 459, 460
    waiver of, 501
DISCLOSURE, duty of, on sale of lease, 427
DISCOVERY to establish forfeiture not allowed, 497
DISTRESS.
    a legal remedy, 82
    abandonment of, 293
    after assignment, 250
    agreement for a lease, under, 247
    amount for which made, 250, 278
         greater than rent due, 278
         six years' arrears only recoverable, 278
    an incident to relation of landlord and tenant, 245, 257
    appraisement, when now necessary, 300
         stamp on, 301
    arrears due at death of reversioner, for, 254
    authority for, 281, 282, 297
    bankruptcy, in, 278, 323
         discharge of bankrupt tenant does not affect right of
           distress, 321
         for rent accruing due after bankruptcy, 325
                               before bankruptcy, 323, 325
    statutory restriction on, 324, 325
     business books, on, 266
    carriages and horses at livery, on, 260
   l costs of, 300, 306, 307
     double rent, for, 568
     double value, for, 248, 568. See DOUBLE VALUE.
     entry under,
         constructive, 285
         how made, 283
         when outer door may be broken open, 272, 288, 284
     exemptions from, 257
    excessive, 286
         action for, 287, 288, 803, 805
         on goods of stranger, 288, 303
         when distress excessive, 287, 288
   expenses of, 298, 300
     for sum reserved as recompense for licence, 87
     fraudulent removal of goods to avoid, 271. See FRAUDULENT
       REMOVAL.
     goods liable to, 245, 257
         corn or hay, 261
         growing crops, 260, 263
          ship, 260
                             (27)
    L.T.
                                                      RR
```

```
DISTRESS-continued.
    goods liable to-continued.
        strangers' goods, 245, 246, 257, 260
             when not allowed, 245, 249
    goods absolutely privileged from, 257
        ambassador and his servants, goods of, 266
        auctioneer, goods delivered to, 259
        carrier, 258
        cattle in or on way to market, 260
       custody of law, things in, 262
        electric lighting apparatus, 266
        factor, goods delivered to, 259
        fixtures, 257
        frames, materials, &c., entrusted to workmen, 265
        furniture sent to depository, 259
        gas meters and fittings, 266
        growing crops sold by sheriff, 262, 263
            except as to rent accruing after sale, 263, 264
       hired agricultural machinery, 264
       hired breeding stock, 264
       keys, 257
       railway rolling stock, 266
       restored, things which cannot be, 260
       sewing-machines, 265
       sheriff.
            goods in possession of, 262
           possession must be continuous, 262
            produce sold by sheriff subject to agreement to
                consume on land, 263
            purchase from, goods in possession of, 262, 263
       straying cattle, 264
       title deeds, 257
       trade.
           goods sent in way of trade, 258
           privilege depends on delivery, 260
       use, things in actual, 261
       water meters and pipes, 266
       wearing apparel, bedding, and tools, to £5...265
       wild animals, 261
       wine sent to warehouse, 259
  goods conditionally privileged from, 257
       agisted cattle or live stock, 267
       cattle and sheep, 267
       growing crops sold under execution, 268
       implements of trade, 266
       lodger's goods, 234, 268
  growing corn, on, 260, 263, 299
  how made, 245
  illegal, 253, 268, 277, 283, 298, 307-315
  immediately after demand, 250
  impounded goods, injuries to, 293
                             28 )
```

```
DISTRESS-continued.
    impounding under, 289
        continuance of, 294
        goods impounded not to be used, 293
        injuries to goods impounded, 293
        non-statement of, in sale-notice, 297
        of cattle, 292, 293
             supply of food and water to, 298
         of corn, straw, or hay, 291
         of furniture, 290
         of growing crops, 291
         on premises, 289
         rescue or poundbreach, 294
         tender of rent after, 295, 298
                       before, 278, 283, 297
         what constitutes, 290
    incorporeal hereditaments, in cases of, 285
    injunction against, 246
    irregular, 297, 315
    law of, not to be extended, 259
    limitation on,
         generally, 259, 260, 278, 570
         in cases of agricultural holdings, 279
    merger, in cases of, 250
    mesne lease, after surrender of, 250
    mode of making, 280
         certificated bailiff to levy, 280
         demand of rent, 283. See DEMAND.
         notice in general not necessary for, 249
         notice necessary for penal rent, 249
         warrant of, 281
         when police may be called in, 281
    necessary incident of rent, 150
    notice before, 249
    notice to quit, after, 247
     off the demised premises, 270
     "order and disposition" clause, effect of distress on, 246, 323
    patent rights incapable of seizure under, 285
     power of, 245, 247, 249
         common law power of, not excluded by express power, 278
         express, 247, 248, 249, 257, 278
              under attornment clause in mortgage, 84, 248
         in mining lease, 211
            mining licence, 214
     property in goods distrained, 304
     protection of undertenant against, 398
     receiver, on goods in possession of, 262
     re-entry, proviso for, where no sufficient distress, 173, 174
     relief against, in equity, 246
     remedy by action not excluded by, 329
     remedy by, extinguished by judgment for rent, 245
     remedy for illegal, 253, 268, 307-315
```

29)

RR 2

```
DISTRESS-continued.
 remedy for illegal-continued.
                against receiver, 253
                goods not on demised premises, 308
                privileged goods, 265, 313
                summary, 314
                where no rent due, 308, 313
    remedy for irregular, 315
           on execution against tenant, 316
    removal of goods after seizure, 286
                goods not in inventory, 286
                goods under execution, 316, 317
    rent in arrear, 249
        payable in advance, 249
        subsequently to expiration of notice to quit, tenant
          holding over, 219
   requisites to, 247
        certain and proper rent, 247
             rent fixed or ascertainable with certainty, 248
        rent in arrear, 249, 498
        reversion in person distraining, 250
             by estoppel sufficient, 251, 252
    right of, 245
            postponement of, 246, 277, 278
             when barred, 570
    sale under, 295, 301
        action for not selling for best price, 302, 303
                  selling before the proper time, 305, 315
        detention of goods of lodgers, 306
        how long landlord may remain on premises for purpose of
          selling, 301, 302, 305
        inventory, 296, 297
        irregular, 300
        must not be subject to condition, 303
        notice of, 296
             service of, 297
        of corn or grain, 304
        of growing crops, 306
        of hay and straw prohibited from being carried off the
          premises, 303
        order of sale of goods, 801
        postponement of, 305
        requisites to, 295
        right to enter and remove goods sold, 303
        surplus proceeds of, 806
        time for, 301, 302
        to whom it may be made, 304
            to appraisers, 304
            not to landlord, or his agent, 304
        when not at best price, 302
        when to be made, 305
        where to be made, 303, 304
                               30 )
```

```
DISTRESS-continued.
    second, for same rent, 288, 289
    seisure under, 285
        how made, 285, 286
        requisites to, 286
             must not be excessive, 286
             sufficient should be taken under, 288
        tender of rent after seizure, but before impounding, 298
                        before seizure, 278, 283
    set-off as against, 284
    sham, to defraud execution creditor, 806
    single chattel, on, 288
    stranger paying off, 324
    sufficiency of, test of, 267, 498
    surrender after, 250
    suspension of right of, 242, 246
    tenancy at will, under, 247
    tenant holding over, on, 247
    tender, effect of, 283, 299
    time for making, 276, 278, 279, 501
             statutory extension of, 276, 277, 501
             time of day for making, 277
    trespasser, where occupier treated as, 247
    warrant of, 281
    when a waiver of forfeiture, 501, 503
                      notice to quit, 479
           not equivalent to a demand, 221
    where to be made,
        general rule, 270
             exceptions,
                  cattle seen on demised premises, and then driven
                 goods fraudulently removed, 271. See FRAUDU-
                   LENT REMOVAL.
                 stock feeding on common, 271
                 under express power, 270
    who may distrain,
        assignee of reversion, 295
        churchwardens and overseers, 256
         co-heir in gavelkind, 256
         co-owner, 256
         co-parceners, 255
         executors and administrators, 254, 255. See Executors.
         heir-at-law, quære, 254
         husband as tenant by the curtesy, 255
                  in respect of wife's property, 255
         joint tenants, 223, 255, 256
         married woman, 254
         mortgagee, 251
                     under lease by mortgager before mortgage,
                                                  224, 225, 245, 252
                            (31)
```

DISTRESS-continued.

who may distrain—continued.

mortgagee, under lease by mortgager after mortgage, 225, 245, 252

mortgagor, under lease by him before mortgage, 224, 225, 251

after mortgage, 224, 225,

not assignor after assignment, 250 lessor after expiry of title, 248

mortgagee after assignment, 250, 251

person merely authorized to receive rent, 253

surety for rent, 250

real representative, 254

receiver, 252. See RECEIVER.

appointed out of Court, 252

tenant by elegit, 256

tenant from year to year, 255

tenants in common, 225, 226, 256

underlessor, 250

vendor to whom purchaser has become tenant, 247

used, goods distrained not to be, 293

winding-up, in, 326. See Winding-up.

withdrawal of, 289, 320

on misrepresentation, 320

DISTRICT COUNCILS, leases by and to, 33

DISTRICT RATE, liability for general, 384

DISTURBANCE of quiet enjoyment, 401, 402

DITCHES, ownership of, 377

Domestic Utility, articles of, whether fixtures, 518 removal of, 523, 525

Door.

inner, when it may be opened or broken open to distrain, 283, 284

outer, when it may be broken open, 283, 284

DOUBLE RENT,

action or distress for, 568

when it ceases to be payable, 569

DOUBLE VALUE,

action for, 313, 566, 567

notice before, 566, 569

when it lies, 313, 566

who can bring, 567

how calculated, 567

no distress for, 248, 568

waiver of claim to, 568

DRAINAGE, custom to charge to landlord, 533, 534 improvement, 539, 540 tax, deduction of, 383

DRAINS.

covenant to repair, 336, 339, 345 expenses of making good, 391-394 representation as to state of, 355

DUCHY OF CORNWALL, leases of lands belonging to, 32, 557, 563

DUCHY OF LANCASTER, leases of lands belonging to, 32, 557, 563

DUPLICATE OF LEASE, 180-182 stamp upon, 180

DURATION OF LEASES, certainty as to, 147 in cases of renewal, 168

DURESS, lease under, 74

"Duties," effect of, in covenant to pay rates and taxes, 388, 390, 391

EASEMENTS.

continuous, 137, 138, 139 implied grant of, 137, 139, 140 reservation of, 139 leases of, 2, 11, 41 not acquired by tenant's user, 137 quasi-easement, 137, 138, 139 what pass on demise, 137, 138, 139

ECCLESIASTICAL CORPORATIONS,
aggregate or sole, 23
leases by, 23 et seq., 38
building lease, 27, 28
easements, of, 28
for lives, 24, 25
mining leases, 27
renewal of leases by, 29
restrictions on leases by, 25-27
concurrent leases, 26
sole, confirmation of lease by, 24

ECCLESIASTICAL PERSONS, leases to, 30

ECCLESIASTICAL PROPERTY, restrictions on letting of, 20

EDUCATIONAL AUTHORITIES, leases to and by, 33

EJECTMENT,

action of, 574, 576, 578. See LAND. before entry, 192 effect of commencing action of, for forfeiture, 236, 498

33

```
ELECTION,
    by infant to avoid lease, 6
    by lessor's son to take a demised house on coming of age, 175
    not to forfeit, 499
ELERMOSTNARY CORPORATION, lease by, 24
ELEGIT, tenant by.
    distress by, 256
    lease by, 70
    notice by, 466
EMBLEMENTS.
    continuance of tenancy substituted for, 49, 583
    entry to take, 532
    what may be claimed as, 532
    when they may be claimed, 531
    who entitled to, 531, 532
ENABLING STATUTES, the, 24
ENCROACHMENTS.
    action in respect of, 565
    application of rule as to, 565
    landlord's title to, 564
ENDOWMENT OF SEE, leases of lands assigned as, 29
Enforcement of contract, 105
Enrolment of leases by tenants in tail, where necessary, 40
ENTRY, 190-192, 237, 570
    by executor or administrator of tenant, effect of, 452
    by landlord
          at end of tenancy, to recover possession, 569
          determines tenancy at will, 464
               where premises are deserted or abandoned, 237, 569
                                  locked up, 498, 569
                     tenant is in possession, 237, 569
          for forfeiture, 499
          forcible, 569
          right of, when barred, 570. See STATUTE OF LIMITA-
             TIONS.
          to distrain, 283
               constructive entry, 285
               effect of unlawful entry, 284
               in case of fraudulent removal, 274
                         incorporeal hereditaments, 285
               when outer door may be broken open, 272, 283, 284
          to inspect mines, 202
           to repair, 342, 345, 571
    by purchaser of goods under a distress, 303
    by tenant, 190-192
          between quarter days, 440
          effect of, 191
```

(34)

```
ENTRY-continued.
    by tenant-continued.
          nature of lessee's interest until, 190
          necessary to enable him to maintain trespass, 192
                              landlord to maintain use and
                                 occupation against him, 192, 330
          suing before, 192
          to perfect lease, 190
          under agreement for lease, 81
    right of, 408, 570. And see RIGHT OF ENTRY.
EQUITABLE ESTATE, 81
ERROR in description of property demised, 133
Escrow.
    agreement made as, 111
    delivery of deed as, 183
ESTATE AGENT, payment of commission to, 190
ESTATES.
    legal and equitable, 81
    one at common law and another in equity, 81
    assignment by, 431
    available in all actions, 75
    by attornment, 83
       payment of rent, 77
       tenancy, 75
    duration of, 76
    feeding, 74
    in whose favour available, 75, 76
    leases by, 51, 54, 68, 72, 74-78
    mutuality of, 75
    not where interest passes, 76
    on reservation of rent to stranger to reversion, 220
    resulting from part performance, 22
    reversion by, prima facie a reversion in fee, 74
                 sufficient to support distress, 251, 415
    tenancy by, 75
    tenant estopped from disputing title of landlord, 75
            may show that it has expired, 77, 78
    upon whom binding, 75, 76
    when estoppel not absolute, 77, 78
ESTOVERS.
    lease of, 2
    right of tenant to take, 378
EVICTION.
```

Exiction,

by title paramount, 236, 238, 239 apportionment of rent upon, 239 as defence to action for rent, 236

EVICTION—continued. of tenant by landlord. constructive, 69 effect of, on covenants, 236 liability for rent, 236, 239 from part of premises, 236 what acts constitute, 237 reletting premises, 237 of tenant by mortgagee, 225 EVIDENCE. extrinsic or verbal, when admissible to explain lease, 126, 133 to identify premises, 109 of executor's assent, 451 of terms of occupation, 185 of title, 243 terms upon which unstamped instruments are received in, 180 EXCEPTION, 141-145 construction of, 142 difference of, from reservation, 141 extent of, 144, 145 in mining leases, 203 may constitute covenant, 153 of bushes, 143 damage by fire, 154, 156 mines and minerals, 144, 145, 200 reasonable use of trees, 379 trees, 143 woods and underwoods, 143 EXCESSIVE DISTRESS. lodger's action for, 303 tenant's remedy for, 287 what seizure is excessive, 287 EXECUTED AGREEMENT, 122 EXECUTION AGAINST TENANT, goods taken in, cannot generally be distrained, 262 growing crops seized under, liable to distress for subsequent rent, 264, 268 hay, grass, &c., not to be sold off, contrary to covenants, 373 landlord's right to one year's rent before removal of goods under, 316, 317 Admiralty Court, in, 323 county court, in, 321 duty of sheriff, 317, 318 damages against, for removing goods without satisfying one year's rent, 320 provisions of Statute of Anne as to, 316 re-entry on, 172

36)

```
EXECUTION OF LEASES,
     by agents, 70
     by deed, 182 ·
     effect of alterations in lease after execution, 184, 185
              non-execution by lessee, 184
                                lessor, 183
     under powers of leasing, 57
EXECUTORS,
     lease by, 60-62
         as real representatives, 61, 62
         before probate, 61, 62
         by one of several, 61
          with option of purchase, 60
     of lessee.
         action for use and occupation against, 452, 453
         assent of, to specific bequest of lease, 450, 451
         assignees, liability of, as, 441, 452
         assignment by, 421, 442, 454
         avoidance of liability by, 453
         entry by, 451
         indemnity to, 442, 450, 454
         lease vests in, 450
         liability of, for rent and breaches of covenant, 452
             only after entry, 452
             for neglect to insure, 454
         plea of plene administravit by, 452, 453, 454
         refusal or waiver of lease by, 451, 452
         specific performance against, 121
             of covenant to take renewed lease, 452, 453
    of lessor, 450
         action by, on covenant broken in lessor's lifetime, 450
         distress by, 254
             before probate, 254
    real estate vests in all, 61
    right to emblements passes to, 532
    underlease by, 60
EXECUTORY AGREEMENT, 122, 150
EXPRNSES
    incurred for abatement of nuisance, 386
```

FACTORS, goods in hands of, for sale, privileged from distress, 259
FACTORY AND WORKSHOP ACTS, incidence of expenses under, 396
FAIR, lease of, 2

FALSA DEMONSTRATIO, rule of, 132 (37)

of lease, 188. See Costs.

EXTRINSIC EVIDENCE, when admissible, 126, 133

FARM, meaning of, 135 FARM BAILIFF, his authority to let, 71 FARMING BUILDINGS. meaning of term, 135 removal of, by tenant, 522 FARMING LEASES of charity lands, 38 FRE SIMPLE, registration of, 190 tenant in, with executory limitation over, 3 FERS. negotiation, 190 of mining expert, 189 payable under Land Transfer Acts, 187 FELON is incapable of making any lease, 21 FEME COVERT, 14-20, 254. See MARRIED WOMAN. FENCES, as between adjoining owners, 375 liability to repair or keep up, 375, 376 ownership of, 377 FERRY, lease of, 2 FINES. application of, 5 payment of, 5, 6, 11 taken on grant of lease, 43 FIRE. accidental, liability of tenant for, 333 exception of damage by, 154, 156, 334, 337 insurance office may be required to lay out insurance money in rebuilding, 382 liability of lessee under covenant to repair, on injury by, 337 rent payable, notwithstanding premises destroyed by, 235 except in case of furnished lodgings, 235 FIRECLAY, lease of, 203 FIRM, signature in name of, 110 FISHERY, lease of, 2, 126, 412 limited licence for, 420 right of, 410, 412 FITNESS FOR USE INTENDED, no implied contract as to, on lease of land, 356 unfurnished house, 354 otherwise as to furnished house, 356

38)

```
FIXTURES.
    agricultural, 522. See AGRICULTURAL FIXTURES.
    annexation.
         mode of, 513, 515
         object of, 515
         temporary, 516, 517
    bill of sale as to, 521
    cannot be distrained, 257, 287
    contract for sale of, 179
    custom as to removal of, 520
    damages for not delivering up, 518
    domestic utility, articles of, 518, 523, 525
    instances of, and of non-fixtures, 513, 514
    landlord's, 531
    liability to repair, 341
    market gardens, in cases of, 524
    on disclaimer in bankruptcy, 528
    ornament, matters of, 516, 518, 523, 524
    parol agreement by landlord to take at a valuation, 528
    pass under grant or mortgage of house, 138, 141, 517, 521
               mortgage by sub-demise, 521
    physical connection not essential, 517
    property in, 513, 523
        under express agreement, 529
    relaxations of rule of ownership of, 517, 518, 522
    removal of,
        articles of domestic utility, 525
                   ornament, 524
        by debenture-holders, 527
        by mortgagee of tenant, 521, 527
        by purchaser, 527
        construction of particular covenants as to, 529
        custom as to, 520
        damages for wrongful, 528
        during term, 531
        effect of new lease, 528, 531
        notice of intention, 524
        notwithstanding surrender, 492, 493, 527
        on forfeiture, 527
        time for, 523, 526
              under agreement in lease, 528, 529
        when a breach of covenant, 341, 529
        without injury to freehold, 526
    remove.
        licence to, 528
        right of tenant to, 517, 518, 519, 523, 527, 529
              of mortgagee to, 521
              under express agreement, 529
        repair of, 531
        separate rent for, 179
    tenant's fixtures, articles recognized as, 523, 526, 531
                                39 )
```

FIXTURES-continued. trade, 518, 531. See TRADE FIXTURES. what are, 512, 513 whether passing under new lease, 528

FLAT.

breach of covenant by erection of block of flats, 363 covenant as to user of, 153 more than one may constitute a "house," 135 restraining conversion of, 439 right to employment of porter for, 89 right to gas under lease of, 88

FLINTS, custom to take away and sell, 144, 370

FLOOD, building carried away by, 235

FORCYBLE ENTRY, 170, 284, 569 damages for, 57 indictment for, 569 proviso for, void, 170

FORESHORE, lease of, 31

FOREST OF DEAN, lease of land in, 32, 203

FORFEITURE, 494, 509

action for, effect of, 501, 502

causes of, 494, 513

assignment without licence, 425 bankruptcy or execution, 509 breach of condition annexed to grant, 494 disclaimer, 494

acts amounting to, 494 non-insurance, 497

non-payment of rent, 504, 510 notice of, 500

construction of clause for, 495, 496

during holding over, 497 effect on underlessees, 495

in cases of mining leases, 212

licences, 214

on breach of covenant in agreement for lease, 497 proof of, 497 relief against, 169, 212, 214, 503. See Relief against

FORFEITURE.

under proviso for re-entry, 495, 496, 509. See Proviso for RE-ENTRY.

waiver of, 342, 499. See WAIVER. where no express proviso for re-entry, 494 where there is express proviso for re-entry, 496 who can enforce, 496

FORMALITIES relating to execution and attestation of lease, 57

40)

FORMS.

Agricultural Holdings Acts.

consent by landlord to improvements, 540

forms in Schedule to Agricultural Holdings Rules, 548, 550, 551

notice by tenant before removal of agricultural fixtures,

by tenant of intention to execute improvements, 540

of election by landlord to purchase, 524

consent to assignment of lease, 423

demand of possession prior to claim for double value,

before expiration of tenancy, 567 after expiration of tenancy, 567

distress,

appraisement, memorandum of, 301
consent by tenant for bailiff to remain in possession, 305
declaration by lodger to prevent distress, 269
inventory and notice before sale, 296
request for extension of period for replevy, 302
removal of goods to place of sale, 303

removal of goods to place of sale, 303

warrant of distress, 281

notice before forfeiture (under Conveyancing Act, 1881), 507 by landlord of intention to recover possession before justices under 1 & 2 Vict. c. 74...579

by landlord to sheriff in possession under execution that rent is due, 318

by lessee to exercise option of determining tenancy for term of years, 482

to quit by landlord, 474 by tenant, 474

FORTHWITH to put premises into repair, construction of covenant,

FOUR-COURSE SYSTEM, meaning of covenant to farm on, 370

FRAUD.

a defence to action for specific performance, 119 lease granted by, 6 parol agreement for lease enforceable on ground of, 106

FRAUDS, STATUTE OF, effect of requirement of writing under, 104, 105. And see STATUTE OF FRAUDS.

FRAUDULENT REMOVAL.

action for, plaintiff cannot interrogate in, 275 complaint before justices as to, 272, 273 landlord may seize within thirty days, 271 unless goods bond fide sold, 271 penalty on person assisting in, 272 power to break open houses, 272

FRAUDULENT REMOVAL-continued. seizure of goods on, requisites to, 273 existing tenancy, 273 goods must be tenant's, 274 fraudulent intent. 274 rent due, 275 what constitutes, 274, 275 FREEHOLD, title to, 113, 114 FRIENDLY Societies, leases by and to, 36 "From," construction of, in commencement of term, 146 "From HENCEFORTH," lease to commence, 146 FRUIT. compensation for, 559 meaning of, in relation to trees, 143 FRUIT TREES AND BUSHES, removal of, by tenant, 520, 526 Full Costs, recovery of, 313, 316 FURNISHED HOUSE, condition of fitness as to, 356 breach of, 356 liability of landlord for rates of, while unlet, 384 stamp duty on lease of, 176 FURNISHED LODGINGS, distress for rent of, 218 stamp duty on lease of, 176 FURNITURE, distrained for rent, where it may be impounded, 290 letting of, 344, 356 removal of, in metropolis, to avoid distress, 276 when privileged from distress, 259, 268 FUTURE LEASE, 190 GALEAGE, 203 GAME, agreement to keep down, 411 construction of demise or reservation of right of shooting &c., 410 special agreements relating to, 411 excess of, 411 licensee to kill, under tenant, 408 penalty for trespassing in pursuit of, 407, 408 wrongful killing by occupier, 407 persons authorized to kill, 407, 408 reservation of, to landlord, 406 how effected, 407, 408 statutory definition of, 407, 408 provisions as to, 407, 408 Ground Game Act, 1880...408. And see GROUND GAME.

(42)

```
GARNISHEE ORDER, attachment of rent under, 226
GAS METER, not a fixture, 517
GAVELKIND LANDS,
    distress by co-heir of, 256
    leases of, 6
GLASS Houses, removal of, 519, 523
GLEBE, leases of, 26, 109
Goods,
    leases of, 3
    liable to be distrained, 257. See DISTRESS.
GOODWILL, sale of, 428
GRANT OF REVERSION, 444
    liability of lessor after, 446
    remedies of grantees and lessees upon, 445
GRASS, exclusive right to feed, 2
GREENHOUSE, when removable by tenant, 519, 525
GROWING CROPS,
    distress of, 260, 263, 268
        excessive, 287
        impounding of, 291
        sale of, 263, 306
        tender of rent before crops cut, 299
    emblements, 531
GROUND GAME,
    meaning of, 408
    occupier's statutory right to kill, 409
        limitation on right, 409
        restrictions on exercise of right, 410
        right inalienable, 409
    occupying owners, rights of, 410
GUARANTEE FOR RENT,
    action on, 331
    by stranger, 179
GUARDIAN,
    appointment of, under Agricultural Holdings Acts, 553
    different kinds of, 8
    lease by, 8, 9
    lease to, by ward, 73
    special, to consent, 5
HABENDUM, 131, 145-150
    certainty as to commencement and duration of lease, 145,
      146, 147
    construction of, 145, 147
                           (43)
                                                     SS
  L.T.
```

HABENDUM-continued. for life, form and construction of, 148 years, form and construction of, 147, 148 from what time it takes effect, 147 year to year, form and construction of, 148 inconsistency between, and reddendum, 145 office of the, 145 HALF-PAY, assignments of, 3 HARDSHIP, defence to specific performance, 119 HARES, ground game, 408. See GROUND GAME. HAY, construction of agreements relating to, 371 HEADLEASE, duty of underlessee to examine, 114 relief against forfeiture of, 505 title to, 114 HEDGE, ownership of, 377 where none between adjoining fields, obligations of occupiers, 375 HEIR-AT-LAW. powers of, pending grant of administration, 62, 254, 464 suing on covenant, 450 HERBAGE, lease of, 2 HEREDITAMENTS, leases of corporeal, 2 incorporeal, 2, 22, 25 HOLDING OVER, 471, 576 action in county court, 577 after determination of term, penalty for, 565 notice to quit by tenant, 568, 569 as waiver of notice to quit, 480 by co-lessee, 564 mesne tenant, effect of, on sub-tenancy, 95 underlessee, 471, 566 yearly tenant, 566 forfeiture during, 497 in relation to distress, 277, 569 landlord's remedies against tenant, 565, 576 pending treaty for new lease, 92 with payment of rent, effect of, 95 Holdings to which Agricultural Holdings Acts apply, 537 Horses, when distrainable, 260, 261 HOSPITAL, whether a business, 358 an offensive business, 361, 362

(44)

Hothouses, removal of, 519

```
House.
    description of, 132
    unfurnished, no implied contract by lessor that it is fit for
      habitation, 354, 355
    what the word may comprehend, 135
HOUSE AGENT,
    claim to commission by, 71
    duty of, in finding tenant, 71
    yearly licence to be taken out by, 71
HUNT, grant of leave to, does not give grantee liberty of shooting.
HUSBANDRY,
    cultivation according to, 368
    express agreements as to course of, 370, 371
HUSBAND,
    concurrence of, 14, 15, 16, 18, 20
    leases by, 14, 19
    underleases by, 20
IDENTITY of demised premises, 132
ILLEGAL DISTRESS.
    remedies for, 313-315
        action, 308, 309, 313
        replevin, 808
        rescue, 308
        summary, 314
            agricultural holdings, 314
            metropolitan police district, 314
    what is, 253, 268, 277, 283, 307. And see DISTRESS.
ILLEGAL OR IMMORAL PURPOSES, rent or damages not recoverable
      under leases for, 353
ILLEGALITY, covenant void for, 163
IMPLIED COVENANTS,
    upon the word "demise," 397
             words "yielding and paying," 151, 153
" Impositions," 388, 389, 392
Impossibility of performance of covenant, 162
IMPOUNDING, 289. See DISTRESS.
IMPROVEMENT RATE, deduction of, from rent, 231
IMPROVEMENTS,
    compensation for non-statutory, 533, 534. See COMPENSA-
      TION.
   cost of executing, 388
    under Agricultural Holdings Acts, 537-563
    under Settled Land Acts, incidence of expense of, 59
                              45 )
                                                 ss2
```

```
IMPROVING LEASES, 46
INCLOSURE.
    made before lease, 565
    of waste land and letting to poor, 34
INCOME TAX, deduction of, from rent, 229
INCOMING TENANT.
    liability of, to pay for tillages, 533, 535
    payment by, to outgoing, 542
Incompleteness of agreement, 117
INCORPOREAL HEREDITAMENTS,
    agreement for lease of, 106
    incapable of seizure, 285
    leases of, 2, 22, 25, 125
        how to be made, 125, 126
    no reservation of rent out of, 150, 218
    reservation of, 141
    sum reserved as rent on lease of, 218
INCUMBER, covenant not to, 422
INDEFINITE GRANT, effect of, 101
INDEFINITE LETTING, effect of, 92
INDEMNITY.
    to bailiff on distress, 282
    to trustee in bankruptcy, 455
    upon assignment of lease, 442, 443
        damages in action on, 443
INDUSTRIAL SOCIETIES, leases by and to, 36
INFANTS.
    feoffment made under a custom by, 6
    leases by, 3
        agent of, 8
        not in pursuance of statute, 6
             avoidance of lease, 6, 7, 8
             confirmation of lease, 7, 8
             recovery of rent, 8
             under custom of gavelkind, 6
         under statute.
               Infants' Property Act, 1830...3, 5
               the Settled Estates Act, 1877...3, 5, 18
               the Settled Land Act, 1882...3, 4
         when infant of unsound mind, 13
    leases to, 9
        avoidance of, 9, 10
        confirmation of, 11
         disclaimer of, 10
        liability for rent, 9, 10
```

(46)

```
INFANTS-continued.
    leases to-continued.
         recovery of premium, 10
    married women, 18
    rectification in cases of, 192
    specific performance not ordered against, or at the suit of, 118
    renewal of lease by, 5
                     to. 9
INFANTS RELIEF ACT, 1874,
    contract set aside under, 10
    extent of applicability of, 7
INJUNCTION,
    against acts in contravention of covenant or breach of con-
              tract, 122, 228, 367, 373, 438
            assignment, 426
            distraining, 246
            entry by landlord to repair, 346
            improper user of premises, 354
            injury to surface by mining, 203
            interference with exercise of sporting rights, 122
            removal of produce, 369
            underlessee's breach, 367, 416
            use of premises in breach of covenant, 357, 416
            waste, 350, 353
            working of collieries, 210
    at suit of remainderman, 367
    in aid of agreement, 122
    indirect enforcement of repairs ky, 346
    mandatory, 367, 373, 375
INSPECTION,
    of lease by landlord or occupier, 187
    of mine, 206
INSTROKE, working by, 202
INSTRUMENTS,
    relating to distinct matters, 178
    when construed on leases, 79, 80
INSURANCE.
    breach of covenant as to, 380, 381, 382
                       damages for, 381
                       forfeiture for, 497
    construction of general covenant as to, 337, 380
    covenant to insure in names of specified persons, 381
                       in office to be named by lessor, 381
    failure to effect, 381, 497
    policy of fire insurance a contract of indemnity, 382
    subrogation, 382
INSURANCE MONEYS, when to be applied in rebuilding, 382
```

(47)

INSURE,

```
covenant by lessee to, not usual, 157
        continuing breach of, 381, 503
        does not exclude liability under covenant to repair, 337
        runs with the land, 382
INTENDED LESSEE,
    name of, omitted from memorandum, 109
    rights of, under agreement for lease, 113
INTENDED LESSOR, attentions by, 113
INTENTION,
    as to merger, 483
    evidence of, 128
    of the parties, 130, 138, 160, 489
Interesse Termini, 190, 191, 484, 494
    how and when it may be perfected, 191, 192
    nature of lessee's interest before entry, 190
INTEREST.
    grant of whole, 415
    in land, within sect. 4 of Statute of Frauds, 105, 106, 220, 426
    on rent in arrear, 331
INTERROGATORIES, to establish forfeiture, 497
INTERRUPTION of quiet enjoyment, 400, 401, 402
INTESTACY,
    distress under, 254
    vesting of real estate upon, 62
Intoxication, lease made by person in state of, 74
INVENTORY,
    before sale under distress, 286, 290, 296
    to lodger's declaration, 270
IRREGULAR DISTRESS,
    action for, 297
        measure of damages in, 315, 316
        not maintainable without proof of actual damage, 316
        tenant not to recover if tender of amends made before
           action, 316
    when distress is irregular, 297, 315. And see DISTRESS.
JOINT AND SEVERAL, whether covenants are, 159, 160
JOINT DISTRESS for separate rents under one deed, 270
JOINT TENANTS,
    distress by, 255
    effect of severance of reversion, 255
    leases by, 58, 63
         by one of several, 63
        to co-tenant, 63
                                48 )
```

```
JOINT TENANTS-continued.
    lease to, 461
    notice to quit by, 63, 476
    payment of rent to, 225
    service of notice to quit on, 478
JUDGMENT.
    de bonis testatoris, 452
    merger of debt in, 245
JUDGMENT CREDITOR,
    lease by, 70
    tenant by elegit, 70
    appeal from, to judge of assize, 582
    mandamus to, to deliver possession, 582
    proceedings before, for recovery of deserted premises, 581
                                        small tenements, 578, 579
                 before metropolitan police magistrate, on wrong-
                    ful distress, 314
KEYS.
    as part of the freehold, 257
    delivery and acceptance of, an implied surrender, 487, 491
    detention of, not necessarily waiver of notice to quit, 480
    rank as fixtures, 517
    what is evidence of acceptance of, 487
LADY DAY, custom as to meaning of, 221
LANCASTER, lease of land of Duchy of, 32
LAND.
    action for recovery of,
         in County Court, 576, 577
         in High Court, 574, 577
           judgment in, 576
           mortgagor in possession, by, 575
           procedure in, 574
           service of writ, 576
             notice of, by tenant to landlord, 576
           special indorsement of writ, 574
           tenant in common, by, 575
    agreement partly relating to, 106
     covenants running with, 431, 433-438, 442, 446, 450.
       COVENANT.
     cultivation of, 367
     meaning of, 134
         statutory definitions of, 4, 5
     mesne profits of, 574
LAND AGENT, power of, to lease, 70
```

49)

```
LAND CHARGES.
     register of, 555
     under Agricultural Holdings Acts, 555
           Tenants Compensation Act, 561
 LANDLORD.
     and tenant, relation of, how created, 78, 83
     entry by, to execute repairs, 345
     goods distrained cannot be sold to, 304
     grant of reversion by, 444
    liable to tenant for acts of distraining bailiff, 281
    not bound to rebuild, 334
     notice to, of want of repair, 345
    obligations of, as to repairs, 333
    remaining in possession of goods after accepting tender of
       rent, 298
    remedy of, where goods removed under execution, 319
    title of, estoppel in favour of, 75
            forfeiture by disclaimer of, 494
            tenant may show expiry of, 77
LANDS CLAUSES ACT, compensation to yearly tenant where land
      taken under, 98
LAND TAX,
    construction of covenants relating to, 386, 387
    deduction of, from rent, 230, 383
    tenant liable to pay, under reservation of net rent, 152, 388
LAND TRANSFER ACTS, 61, 186, 187
    registration of assignment under, 430
LATENT AMBIGUITY, parol evidence admissible to explain, 128
LEASEHOLD LAND,
    leases of, 5
    registration of, 186
LEASEBOLD REVERSION, title to, 114
LEASES, 124-212
    agreements for, 78, 79, 103-123. And see AGREEMENT FOR
      LEASE.
    at will, 124, 147
    by deed, 124, 125
       estoppel, 74. See ESTOPPEL.
       parol, 124, 125, 126
    concurrent, 191
    custody of, 187, 489
    distinguished from licences, 85
    duration of, 147
              determinable within the term, 147
              for indefinite term, 101, 147
                  life, 100, 131, 148. See LIFE, lease for.
                           (50)
```

LEASES-continued.

```
duration of-continued.
            for three years, how reckoned for Statute of
                  Frauds, 124, 125
               more than three years, 125
           for years,
                  certainty required in, 99
                  option of further term, 100, 124, 148, 165
                         to determine, 100, 166
                  subject to contingency, 99
           from year to year, 93
           in perpetuity, not possible, 99
effect of alterations in, 180, 184
         instrument void as a lease, 125
exclusive possession under, 130
form and construction of, 130
     by correspondence, 131
      construction with reference to state of facts at time of
        execution, 134
      ordinary form, 131
          covenants, 153-164. See COVENANT.
          habendum, 131, 145. See HABENDUM.
          premises, 131
             consideration, 131
             date, 131
             operative words, 132
             parcels, 132
             recitals, 131
         reddendum, 131
         proviso for re-entry, 168-174. See Proviso for
           RE-ENTRY.
    statutory form, 131
future, 190
how to be made,
    by parol, 124-126
    effect of unsealed lease for more than three years, 125
    when deed is necessary, 124-126
incorporeal hereditaments, of, 125
indefinite term, for, 147
in possession, 54
in reversion, 236, 239
in trust for company, 36
instrument when construed as, 79
matters relating to completion of,
    attestation, 183
    custody of, 187
        right of landlord to inspect lease, 187
                 occupier to inspect lease, 187
    entry of lessee, 190. See ENTRY.
    execution,
        delivery, 182
                           51
```

LEASES—continued.

```
matters relating to completion of-continued.
        custody of-continued.
            execution-continued.
                 failure of lessor to execute, 183
                 mode of, 182, 183
                 signature, 182
    memorandum indorsed on or added to, effect of, 184, 185
    mining, 192. See MINING LEASE.
    not exceeding the term of three years, 124
    of what kinds of property may be made, 2, 3
        corporeal hereditaments, 2
        incorporeal hereditaments, 2
        mines, 192-212. See MINING LEASE.
    persons capable of making and taking, 3
    power to resume possession of part of premises, 174
    power, under, 50. See Power.
    rack-rent, at. 186
    rectification of, 192
    renewal of, 166-168
    retainer of, after surrender, 489
    reversionary, 191
    sealing, 182
    separate matters, relating to, 179
    setting aside, 5
    stamps on, 175-180. See STAMP.
        lease subsequent to stamped agreement, 123
    statutory form of, 131
              requisites of, 124
    verbal, 124
    void or voidable, 500
LEGAL ESTATE,
    difference between, and equitable estate, not taken away by
      Walsh v. Lonsdale, 81
    passing of, on assignment, 429
    vesting of, in cases of intestacy, 62
LEGATEE,
    liability of, for rent, &c., 352
LESSEE,
    deemed surety to lessor for assignee, 441
    devolution of term on death of, 450
    estate of deceased, liability of, 454
    indemnity to, by assignee, 442
               damages under, 443
    is a purchaser pro tanto, 113
    liability of, effect of assignment on, 441
    remedies against grantees of reversion, 445
    rights of intended, 113
         production of lessor's title, 113
             statutory restrictions on, 113, 114
                            (52)
```

```
LESSOR.
    covenant by, when binding on remainderman, 96, 97
    derogation from grant by, 399
    liability of, after grant of reversion, 446
    production of title of, 113
    title of, 114, 427
" LET,"
    implication from the word, 398
LETTERS.
    contract by, 104, 107
    negotiations by, 108
LETTING, distinguished from licence, 85
LIBERTIES, in mining lease, 201
LIBBARY AUTHORITY, hiring of land by, 33
LICENCE,
    by lord of manor to lease, 65
    by tenant for life to lease, 46, 49
     distinguished from lease, 85
    effect of, 87
     estate not conferred by, 87
     exclusive, 86
     for pleasure and for profit, 87
    instances of, 86, 87
     lease in form of, 130
     lease under, 65
     merely personal, 87
     mining, 213-216. See MINING LICENCE.
     personal, to enter upon land, 216
     presumption of, 366
     stamping, 85
     sums reserved on, 219
          no distress for, 87, 247
     to assign, 420
          covenant not to withhold, 424
          duty of vendor to procure, 424
          effect of, restricted to assignment actually authorized,
            426
        form of, 423
     to enter and take goods sold under distress, 303
     to erect hoarding, 86
     to fish, 420
     to remove fixtures, 528
     to supply refreshments in theatre, 86
     to use Corporation's dock, 22
      when assignable, 88
            revocable, 87, 88
                                 53 )
```

```
LICENCE, PUBLIC HOUSE.
    compensation for non-renewal of, 364
    construction of covenants relating to, 363, 364
    covenant against forfeiture of, 363, 364
    loss of, 191
    receiver of, 364
Lien, of lessee for expenses and costs, 121
    leases for, 100, 101
        by ecclesiastical corporations, 25
        construction of, 144
        determination of, 483
        different kinds of, 100, 149
        how made, 100, 131, 148, 149
        production of persons for whose lives estates are held,
        to commence in futuro, 148, 149
    tenant for,
        adoption by, of contract of predecessor, 45
        bankrupt, lease by, 70
        confirmation of leases by, 45
        consent of, 45, 48
        in common, lease by, 63, 64
        joint tenant, lease by, 63
        lease by, 41
                 for small holdings, 35
                 not under statute, 49
                 of mansion-house and park, 41, 70
                 under power, 51, 198
                          agreement to grant lease, 55
                        Settled Estates Act, 1877...5, 48
                       Settled Land Act, 1882...4, 41-48
                            building lease, 41, 46
                                with option of purchase, 46
                            conditions of and covenants in lease.
                              42, 43
                            for 21 years and under, 41
                            mining lease, 41, 194, 197, 198
                            notice to trustees of settlement, 44
                            repairing and improving leases, 46
                            when tenant for life has mortgaged.
                              69, 70
                 without or in excess of power, 54, 55
        liability of, for permissive waste, 333, 352
                    to repair, 333
        licence by, to copyholder to lease, 46
        lunatic, lease by, 13
        married woman, lease by, 17
       parol agreement by, 111
       persons having powers of, 47
                           (54)
```

```
LIFE-continued.
    tenant for-continued.
        renewal of lease by, 45
        surrender of lease to, 45, 486
        trustee of damages recovered, 42
        two or more persons constituting, 45, 64
        where settlement by way of trust for sale, 48
LIGHT, when lease carries right to, 139, 140
LIMITATIONS, STATUTE OF, 570
    right of entry, 570
    time within which action for rent may be brought, 570
                       distress for rent may be made, 278, 325
                           on agricultural holding, 279
LIMITED INTEREST, restrictions arising from, 3,40
LIQUIDATED DAMAGES, 163
LIQUIDATOR, lease by, 73
LIVERY OF SEISIN, on leases for lives, 131
LIVE STOCK, leases of, 2, 405. And see CATTLE.
LOCAL AUTHORITIES.
     leases to, 32, 33
     meaning of the expression, 36
     partially exempted from Mortmain Acts, 36
 LOCAL IMPROVEMENT RATES, deduction of, from rent, 231
 LODGER.
     action for excessive distress by, 288, 303
     declaration by, 269
     detention of his goods under distress for rent due by tenant,
       306
     entitled to conveniences of the house, 89
     may remove goods before distress, 274
     protection of, from distress, 234, 268, 269, 289
     payment of rent by, 234
     tender or payment of rent by, 268, 299
      who is, 269
 LODGING-HOUSE KEEPER, liability of, for goods of lodger, 89
 LODGING HOUSES.
      leases of land for, 33
      the business of, 358
 LODGINGS,
      agreement for letting furnished, is within Statute of Frauds,
        106
      effect of payment of rent for, 96
      suspension of rent for furnished, 235
      where covenant not to underlet, 413
  LUNACY, jurisdiction in, 11, 12, 13
```

(55

```
LUNATIC,
    lease of, 11
         by committee, 11, 12, 13
              without authority of court, 11
          during lucid interval, 14
          in Ireland, 11
         made personally, 13
          settlement of lease by Master, 12
         under Lunacy Act, 1890, s. 120...11
         under Settled Estates Act, 1877...13
         under Settled Land Act, 1882...12
    lease to, 11
         personally, 13
    power vested in, exercise of, 11
    renewal of lease by, 11
    tenant in tail, 11
MACHINERY,
    agricultural, when not distrainable, 264
                       removable by tenant, 522
    removable by tenant as trade fixture, 518
    when a fixture, 516
MAN IN POSSESSION, 293, 294, 298, 307
Manor, lease of, 2
Mansion-house, lease of, by tenant for life, 41
MANURE,
    construction of agreements relating to, 371
    custom as to, 542
    removal of, 368, 371
    right of on-stand for, 535
MARKET, lease of, 2
MARKET GARDEN,
    compensation for improvements in, 542, 562, 563
    conversion of farm into, 350
    meaning of, 563
    right of lessee to remove fixtures from, 524
                             trees and bushes from, 519, 520
MARKET PRICE, covenant to buy beer at, 365
MARRIED WOMAN,
    acknowledgment of deed by, 14, 15, 16
    appointment of attorney by, 20
                    next friend of, 553
    distress by, 254
           by husband, 255
    examination of, when dispensed with, 18
    leases of property of, 14-20
        equitable separate property, 14
                            (56)
```

```
MARRIED WOMAN-continued.
    leases of property of-continued.
        non-separate property,
             by husband under Settled Estates Act, 1877...14, 16, 17
             not in pursuance of statute, 19
             under Fines and Recoveries Act, with concurrence of
               husband, 14, 16, 18
         settled property, separate or not,
             under Settled Estates Act, 1877...14, 16, 17, 18
                  by husband, 14, 16, 17
             under Settled Land Act, 1882...14, 17
         statutory separate property, 14, 15, 16
         tenant in tail, where married woman is, 14, 16, 18
         under express power to lease, 14
    lease to, 16, 20
          under former law, 20
    liability of, under lease, 16, 20
    renewal of lease by or to, 14, 17
    underlease of property of, 20
MATERIALS.
    brought on to the ground under agreement for building lease, 81
MELIORATING WASTE, 350
MEMORANDUM IN WRITING, 104, 105, 107-110
    agent as party in, 108, 110
     contents of, 107, 108
     description of parties in, 108
                   premises in, 108, 109
     essential terms of, 108
     fixing commencement and duration of term, 108, 109
     indorsed on or added to lesse, 184, 185
     need not be contemporaneous with agreement, 107
     several documents, contained in, 107
                         parol evidence to connect, 107
     signature of, 110
         by auctioneer, 110
     sufficiency of, 107
         entry by steward, 110
         resolution of directors, 110
MEMORIAL of lease, 185
MENTAL INCAPACITY, leases in case of, 11, 12, 13
     determination of tenancy by, 483
     distress after, 250
     how avoided, 484, 485
     in equity, 484
     of debt for rent in judgment, 245
     of interests in different rights, 484
     of reversion on sub-lease, 485
     statutory provisions as to, 484, 485
     when it occurs, 483
```

(57)

MESNE PROFITS, 574

MESSUAGE, meaning of, 135

METROPOLIS MANAGEMENT ACTS, liability for expenses under, 389, 390

METROPOLITAN BOROUGHS, 32

METEOPOLITAN POLICE DISTRICT, remedy for wrongful distresses in, 314

METROPOLITAN POLICE MAGISTRATE, recovery of deserted premises before, 582

MILCH Cows, when impounded, may be milked by person distraining, 293

MILL-STONE, a fixture, 517 removal of, 530

MINERALS,

effect of exception of, 144, 145
meaning of, 199
reservation of, in building lease, 144
right to work, 145
undivided moiety of, agreement to let, 117

MINE, primary meaning of, 199

MINES AND MINERALS, definition of, in Settled Land Act, 1882...196 exception of, 144, 145, 200 ordinary meaning of, 199

MINES,

description of, in lease, 200 effect of exception of, 144 lease of, under power, 2, 52 open and unopened, 52, 198, 211, 212 where working of, is waste, 211, 212

MINING EXPERT, fees of, 189

MINING LEASE, 192-212

account against company beneficially interested in, 59
"average" or "shorts" clause in, 205
capitalising part of rent reserved by, 50
carries necessary incidents, 201
characteristics of, 192, 193
Crown lands, of, 31
customary clauses in, 207
covenants to work in, 207-210
description of parcels in, 200
difference between, and other leases, 192, 193
and mining licence, 213

58)

```
MINING LEASE—continued.
    ecclesiastical corporation, by, 27
    excepted from sect. 6 of Bills of Sale Act, 1878...211
    exceptions in, 203
    extent of lessee's obligation as to working under, 207
    fixing minimum amount of minerals to be raised, 205.
    galeage, 203
    implies power to get demised minerals, 200
            support of surface, in absence of agreement to the
              contrary, 200
    inability of private trustees to grant, 193
    instroke, 202, 209
    liberties, 201, 202
    minimum or dead rent, 203, 208, 209, 210, 212
                 absolute covenant to pay, 204
                 payable after all minerals worked, 205
                 twofold object of, 205
    mode of working under, 208
    outstroke, 202
    plan on, 201
    power to distrain on chattels in adjoining mine, 211
             win and work minerals, 203
    proportion of rent to be capitalized, 197
    provisions of Settled Land Acts relating to, 193
                      accordance with local custom, 195.
                      application of mining rents, 195, 197
                      definitions of "rent" and "mines and
                        minerals," 196
                      minimum rent, 197
                      reservation of rent, 194
                      surface and minerals apart,[196, 197
                      surrender, 195
                      tenant for life's power to lease, 194, 197
    quiet enjoyment, breach of covenant for, 212
    recouping clause in, 205
    reddendum in, 203
    rent reserved by, is really purchase-money, 193
    reservations in, 203
    reserving the surface, 42, 196, 197
    royalties, different kinds of, 203, 204
              how reserved, 203
              meaning of, 203
    schedule to, 201
    Settled Estates Act, 1877, under, 50, 197
    stamp on, 212
    statutory restrictions on, and relief against, forfeiture, 212
   tenant for life, by, 41, 194, 197, 198
    trustee not justified in granting, 58, 193
   unopened minerals, of, 52
   "usual" provisions in, 206, 207
   waste in relation to, 211
  L.T.
                               59
```

TT

MINING LICENCE, 213-216 can only be granted by deed, 213, 214 confers no estate in land, 213 covenants in, 214 distinguished from and compared with mining lease, 213, 214 exclusive or non-exclusive, 215 liberties in, 213 position of licensee under, 213 proviso for re-entry in, 214 rent or royalty in, 213, 214 right of distress under, 214 stamp duty on, 216 statutory provisions relating to re-entry and relief against forfeiture, 214, 215 usual form of, 213 what it is, 213

Misdescription, 427

MISREPRESENTATION by lessee, 354 damages for, 130

MISTAKE,

as a defence to action for specific performance, 120 effect of, 192 evidence of, 192 in notice to quit, 472, 473 payment of rent by, 226 recovery of rent paid by, 226

MODE OF USING PREMISES,

covenant restricting lessor, 359
where there is an express agreement, 356
construction of contracts relating to exercise of trades, 357
where there is no express agreement, 353
warranty of fitness of premises for use intended, 355
on demise of furnished house, 356

land, 356 unfurnished house, 354

illegal or immoral purposes, 353

Money in sealed bag liable to be distrained, 260

"Month," meaning of, 469

MONTHLY TENANCY, notice required to determine, 467

"MORE OR LESS," construction of, 136

MORTGAGE,

attornment clause in, 83 tenancy from year to year under, 83 by sub-demise, 416, 421

60)

MORTGAGE—continued.

distress for rent under lease after, 252 not under Conveyancing Act, 1881...252 under Conveyancing Act, 1881...252 distress for rent under lease before, 251 by mortgagor, 251

by mortgagee, 252 equitable, by deposit, 429

MORTGAGEE.

compensation for improvements as against, 561 distress by, 251, 328. See DISTRESS.
after assignment, 250, 251
enforcement of covenant against, 431
equitable, 431

lease by,
not under statute, 69
under Conveyancing Act, 1881...66
lease to, by mortgagor, 73
leasing in concurrence with mortgagor, 69
not compellable to take legal assignment, 432
notice by, to pay rent, 225, 252
payment of rent to, 224
receiver appointed by, 252, 416
removal of fixtures as against, 520-522
second, distress by, 251
tenancy under, how created, 68, 252
effect of, 68, 69, 252

MORTGAGOR.

death of, 465 distress by, 251, 253. See MORTGAGE. in possession suing for possession, 575 lease by,

after the mortgage, not under statute, 67, 68, 238 payment of rent under, 224 under Conveyancing Act, 1881...66 effect of, 67, 238

before the mortgage, 67
payment of rent under, 224
leasing in concurrence with mortgagee, 69
to mortgagee, 73
removal of fixtures by, 521
where mortgagor is tenant for life, 69

MORTMAIN ACTS,

exemptions from, 36, 39
leases to corporations, 23
to local authorities, 36
to trustees of charities, 39
what leases to corporations are within, 23

```
MOSSES & TURBARIES, exception of, 142
MUNICIPAL CORPORATIONS,
    leases by, 32, 33, 39
    renewal of leases by, 33
MUTUALITY.
    in agreement, 117, 118
    instances of want of, 118
    waiver of, 118
NECESSARIES, where demised premises are, infant lessee liable for
NECESSARY REPAIRS, agreement to do, 337
NEGATIVE BARGAIN, 437
NEGATIVE COVENANT, re-entry for breach of, 171
NEGOTIATION, by letter, 103
NON-REPAIR, by landlord, no defence to action for rent, 236
NOTICE
    before distraining, 249
    by landlord to purchase fixtures, 524
    by mortgagee to tenant of mortgagor, 225, 252
    by tenant for life of intention to lease, 44
    by tenant to sheriff upon execution against tenant; 374
    constructive, of lessor's title, 114
                    restrictive covenants, 433, 437, 440
    of action for recovery of land, 576
    of apportionment of charge, 395
    of cause of forfeiture, 500
    of claim under Agricultural Holdings Acts, 546
    of distress for rent, 249, 296, 297
        action for want of, 297
        effect of want of, 297
        landlord not bound by cause of taking mentioned in, 297
    of determination of tenancy at will, 463
    of grant of reversion, 226, 444
    of intention to exercise option of purchase, 165
                   proceed before justices for recovery of posses-
                     sion, 579
    of repudiation of lease, 10
    of tenant's intention to execute drainage improvements, 540
                           remove agricultural machinery, &c., 523-
    to determine tenancy at will, 463
                          for optional term of years, 482
    to landlord, of intended improvement, 540
                of want of repairs, 335, 345
    to lessor, of assignment by tenant at will, 420
    to purchaser, of terms of tenancies, 447
    to remedy breach of covenant before forfeiture, 506
```

62)

```
NOTICE - continued.
    to repair, 504
    to tenant holding over, to pay double value, 566
                            to repair, 341, 342
    underlessee deemed to have, of covenants in original lease, 416
    waiver of, 10, 44
NOTICE TO QUIT, 465
    abandonment of, 480
    acquiescence in irregularity of, 480
    by agent, 475
       assignee of reversion, 475
       cestui que trust, 476
       either landlord or tenant, 475, 568, 569
       joint tenant, 63, 476
       personal representatives under Land Transfer Acts, 476
       partners, 476
       receiver, 476
       tenant who.holds over, 568
    certainty in, 474
    dispensing with, 480
    distress after, 247
    expiration of, 469
    "final," 543
    form of, 472
        alternative form, 472
        mistake in, 472, 473
        sufficiency of, 473
    in the case of a right of shooting, 466
                  a holding within the Agricultural Holdings
                     Acts, 467
    is sufficient demand of possession, 567
    length of, 466, 467
        by agreement, 46
           custom, 466, 534
                  in quarterly, monthly, or weekly tenancy, 467,
                    470
    may be given on Sunday, 465
    part only of premises, as to, 473
    period, how reckoned, 468
        admission of tenant as to commencement of tenancy, 470
        where tenant has entered in middle of quarter, 468, 469,
                                   on different parts of premises
                                     at different times, 472
                                  under void lease, 471
        where tenant has held over, 471
    second, 479
    service of, 477
        by post, 478
        in cases of holdings within Agricultural Holdings Acts, 477
                            (63)
```

```
NOTICE TO QUIT-continued.
     service of-continued.
         memorandum of service of, 478
         on officers of corporations, 478
         when notice given by tenant, 478
         where tenant cannot be found, 478
     to whom to be given, 476
         in case of tenant's death, 477
         suspension of, agreement for, 480
         waiver of, 479, 543. See WAIVER.
         when not required, 466, 471, 481
         when required, 466
         withdrawal of, 480
NUISANCE.
    covenant against, 361
    deduction from rent of expenses of removal of, 383, 386
    from vermin, 856
    liability of landlord for, on demised premises, 335
    remedy in respect of, 402
Nueserymen may remove trees and hothouses, 519
OCCUPATION.
    by cestui que trust, 93
       servant or agent, 88
       tenant, effect of, 190-192, 447. See ENTRY.
    contract to pay for, 330
    of part of house, 384
    evidence of terms of, 185, 447
    exclusive, 85
    not creating tenancy, 78
Occupation Lease granted under Conveyancing Act, 1881...67
Occupying Owner, rights of, in respect of ground game, 410
OFFENSIVE TRADE, covenant against, 361
    acceptance of, 103, 122
    stamping of, 122
    verbal, 122
    withdrawal of, 104
Offices, lease of, 3
On-stand, right of, 535
OPEN MINES OR QUARRIES, 211, 212
OPERATIVE WORDS in lease, 132
OPTION.
    assignability of, 419
    of purchase, 164-166
        by whom exercisable, 164, 165, 482
        cannot be given by trustees or personal representatives.
          58, 60, 164
                           (64)
```

```
OPTION—continued.
     of purchase-continued.
         conditions precedent to, 165, 166
         effect of, on stamp, 179
         effect on, of breach of covenant, 166
         in building lease by tenant for life, 46
         in lease by corporation, 23
                    executors or administrators, 60, 164
                    real representative, 62
                    trustees, 58, 164
         notice to exercise, 165
         partial exercise of, 165
         period for exercise of, 164
         right to insurance money under, 166
                 purchase-money under, 164
    posting notice of exercise of, 104
    to determine lease, 100, 166, 228, 482
         how to be exercised, 166
         notice to exercise, 482
         who can exercise, 166, 482
    to take further term or renew, 100, 124, 148, 165, 419, 447
         when exercisable, 100
"OR THEREABOUTS," meaning of, 136
ORDER AND DISPOSITION of bankrupt, goods in, 246
ORNAMENT.
    matters of, removal of, 523, 524
                whether fixtures, 516, 518
"OUTGOINGS."
    effect of word in covenant to pay rates and taxes, 386, 388, 393,
       394, 396
    rent free from, 388
OUTGOING TENANT.
    compensation to, by whom payable, 533, 536
                      for away-going crops, 533
                          tillages, 533, 534
                      under statute, 536, 542
OUTSTROKE, working by, 202
OVERSEERS, distress by, 256
OYSTER FISHERIES, lease of shore used for, 31
Parcels of a lease, 132
    in agricultural leases, 132
       mining leases, 200
    legal meanings of terms of description of, 134
    parcel or no parcel, a question for jury, 134
PARISH.
    council, leases by, 34
             power of, to hire land and let in allotments, 35
                                65
```

meeting, powers of, as to letting in allotments, 35

PARISH - continued.

lands, lease of, 33, 34

```
vesting of parish property in chairman of, 34
PARK, lease of, by tenant for life, 41
PARLIAMENTARY TAX, what is, 386, 387
PAROL AGREEMENT,
    admitted by the defendant, 111
    as defence to specific performance, 106, 120
    collateral, 106, 107, 129
    corroborative evidence of, 129
    enforced on ground of part performance, 111
    liability for rent under, 106
    when enforceable, 111, 112
PAROL,
    evidence.
        admissible to identify premises to be demised, 109, 127
                      show condition of property, 127
        as defence to specific performance, 127
         of collateral agreement, 129
           contemporaneous parol proviso, 121
           custom, 127
           intention of parties, 128
           mistake, 192
           subsequent agreement to vary written contract, 121
           unstamped agreement not allowed, 123
            verbal warranty, 130
         to connect documents, 107
            explain subject-matter of agreement, 426
            explain technical terms, 128
            prove rescission of written contract, 121
            remove latent ambiguity, 128
         when excluded and when admitted, 126-130
    lease, 124, 125
    licence, 87, 423
    licence to quit, 488
    surrender void, 486
     variation of amount of rent, 227
                 written agreement, 106, 120, 126, 127
PART PERFORMANCE OF PAROL AGREEMENT, 111
    acts of, 112
           entry and expenditure, 112
           expenditure in alterations by tenant in possession, 112
                                         sub-lessee of tenant, 118
           payment of increased rent, 112
                       rent in advance, 112
     by tenant for life, 55
     estoppel resulting from, 22
                             ( 66
```

PART PERFORMANCE OF PAROL AGREEMENT—continued. extent of doctrine of, 111, 112 making of alterations by intended landlord, 113 retention of possession by tenant, 113

PARTIES.

to action on covenant, 160 agreement for lease, 108, 109

PARTNER,

assignment by, to co-partner, 422 lease by, to firm, 481 proof against, on disclaimer in bankruptcy, 461

PARTNERSHIP, lease to, by partner, 481

PAVING EXPENSES,

deduction of, 231, 383 payment of, 339, 390

PAYMENT OF RENT, 81, 151, 224, 225, 234. And see RENT.

PAWNBROKER, articles pledged with, not distrainable, 258

PENAL RENT,

construction of reservation of, 227 distress for, 248 notice necessary before, 249

PENALTY, 163, 180, 227

PENSIONS, alienations of, 3

PERFORMANCE OF COVENANT, difficulty in, 162 meaning of, 171

Perishable Goods cannot be distrained, 260

Perjury, how punishable, 548

PERPETUAL RENEWAL, covenant for, 166, 167

PERPETUITY does not apply to covenants running with land, 434

PERSONAL REPRESENTATIVES,

leases by, 60-62. And see Executors, Administrator. real estate vests in, 450

PICTURES, removal of, by tenant, 356

PLAN, construction of deed by reference to, 133, 140, 201

Policy of fire insurance, 382

POND OR POOL, meaning of, in grant, 135

POOR-RATE.

deduction of, from rent, 383, 387 liability for, 383, 387, 388 nature of, 387

Possession,

abandonment of, by sheriff, 262 away-going crops, for purpose of, 535 change of, on surrender, 490

67

```
POSSESSION - continued.
    construction of provisoes for resuming, 174
    covenant against parting with, 421
    damages for non-delivery of, 564
    delivery of, by lessee to lessor, 487, 564
                to new tenant, 490
    demand of, 463, 566, 567
    encroachments, of, 564
    entry, 569
    exclusive, necessary for lease, 85, 130
    failure to give, 398
    given and taken under agreement for lease, 81, 247
    implied undertaking for delivery of, 564
    lease in possession, what is, 54
          under power, must be made to take effect in, 54
    man in, 293, 294, 298, 307
    mortgagor in possession suing for, 575
    obligation of tenant to give up, 564
    of part of premises, after expiration of lease, 277
                         power to resume, 174, 474
    recovery of, 215, 564, 565, 574
         before justices, 578
         in County Court, 576, 577
            High Court, 574
    refusal to deliver, 481, 577
    remedies for recovery of,
         direct, 569
         indirect, 565
    resumption of, under Agricultural Holdings Acts, 474
    retention of, as act of part performance, 113
    taken pending completion of sale or negotiations, 463
    "walking," 307
    when landord may refuse to accept, 564
    writ of, 576
POSSESSORY TITLE, 573
Post,
    acceptance of offer by, 104
    remittance of rent by, 242
    sending of notice to exercise option by, 104
                         quit by, 478
POUND, 289, 292
    charge for impounding in, 307
    liability for bad condition of, 293
POUND-BREACH.
    remedy for, 290, 294, 295
    what is, 291
Pound-keeper, liability of, 289
POWER,
    conformity between, and lease, 51
    construction of, 51
                                68
```

```
Power-continued.
    fraudulent execution of, lease void for, 51
    given to trustees who disclaim, 50
    lease under, 50-57
        agreement by tenant for life for, 55
        attestation and execution of, 57
         by donee of power to himself or to a trustee for himself, 51
         by married woman, 14, 15, 19
        kind of lease to be granted under, 52
         length of lease to be granted under, 53
             term in excess of, 53
         lessee not to be dispunishable for waste, 54
         must be in possession, 54
         of mines, 52
         property to be leased, 51
             " lands usually demised," 51
         rent to be reserved, 51, 53
         to limited company, 54
         with covenant for renewal, 54
         "usual covenants," 54, 56
    of attorney, lease executed under, 19
    of leasing, effect of Settled Land Act on, 45
         order of Court granting, 46
    relief against defective execution of, 55, 56
        not in case of statutory power, 56
    restrictions affecting, 51
    vested in lunatic, how exercised, 11
Power of Attorney, payment of rent under, 224
PREFERENTIAL DEBTS in bankruptcy and winding-up, 323, 326, 328
PREMIUM.
    received on grant or renewal of lease, 11, 43
    recovery of, 10, 115
PREMISES.
    description of, in memorandum in writing, 109
    in lease, 131
    meaning of word, 136
PRESCRIPTION, acquisition of right or title by, 137
PRESUMPTION.
    as to encroachments, 565
          soil to centre of adjoining street, 134
          strip of waste land, 134
    of licence, 366
    of lost grant, 137
    respecting ownership of hedge, 377
PRIVATE RESIDENCE, covenant for use as, 362, 363
PRIVILEGE, grant of, 422
PRODUCE.
    covenants as to removal of, 371
    distress on, where sold under execution, 373, 374
                            (69)
```

PRODUCE -eontinued. injunction against removal of, 373 obligation to expend on premises, 368 sale of, under distress, 375 execution where produce not to be removed, 373, 374 use and disposal of, by purchaser, 374 PROFIT À PRENDRE, mining licence is, 213, 215 PROMISSORY NOTE, payment of rent by, 243 PROPERTY. capable of being let, 2 in goods distrained, 304 PROPERTY TAX, deduction of, from rent, 229, 383 agreement forbidding, is void, 385 PROTECTOR, consent of, 40 PROVIDENT SOCIETIES, leases by and to, 36 PROVISO FOR RE-ENTRY, 168-174, 494, 496 applied to yearly tenancy, 497 construction of, 170, 171 for non-payment of rent, 168, 228, 497 demand of rent, 497 forcible entry, 170 forfeiture, 495 how framed, 169 implication of, 169 instances of, 171-174 is "a condition for forfeiture," 509 lessee cannot determine lease under, 495 mining licence, in, 213 on assignment without licence, 495 on breach of negative covenant, 171 on winding-up, 499 running with the land, 172 to whom right of entry can be reserved, 169, 170 when usual, 155 in lease of public-house, 154, 169 on bankruptcy of lessee not usual, 154, 157, 168 breach of any covenant not usual, 151, 157 non-payment of rent usual, 155 who entitled to benefit of, 170 on severance of reversion, 448, 449 Public Health Acts, liability for expenses under, 386, 390, 391, 393, 394 Public-house, covenant against use of premises as, 360, 362

covenants connected with licences, 363, 364 to use premises as, 364

70)

```
Public-House-continued.
    distress on brewers' casks in, 259
    forfeiture of licence, 236, 363
    loss of licence, 191
    provisions relative to user of, 363, 438
    proviso for re-entry in lease of, 169
    reversionary lease of, 191, 236
    tied, 163, 363, 365, 366, 416, 438
    underlessee of tied, 416
    usual covenants in lease of, 154, 156, 157, 169, 365
Purchase, option of, 164-166, 179. See Option of Purchase.
PURCHASER.
    notice to, of terms of tenancies, 447
    of goods sold under distress, 303
    of produce, 374
QUARRIES, 211, 212, 422
QUARTERLY TENANCY,
    length of notice required to determine, 467
    what constitutes quarterly reservation of rent, 222
QUASI-EASEMENTS, 137
QUIET ENJOYMENT, COVENANT FOR,
    absolute, 400
    breach by person claiming under lessor, 403
               working ironstone so as to interfere with lessee of
                 coal, 212
    construction of general covenant for, 399
                     special covenant for, 494
    corporation, by, 403
    damages, measure of, in action on, 405
    effect of, where lease in reversion invalid, 404, 405
             where lesses cannot enter, 403
    how far it runs with land, 401
    how it is to be construed, 401
    implied, 397-399
         breach of, 399
         ceases with lessor's estate, 398
         excluded by express covenant, 398
         from word "demise," 397, 398
         from word "let," 397
    independent of other covenants, 159
    is a usual covenant, 155
    sub-lessor, breach by, 403
    usual restricted covenant, 400
         against what damage it protects lessee, 402, 416
         breach of, 400, 401
             effect of, 400
             must be by positive act of physical disturbance, 400,
               401, 402
              subsequent to lease, 402
                            (71)
```

RABBITS, 408. See GROUND GAME.
parol promise to kill down, 129
right of tenant to shoot, 403, 409

RACK RENT, lease or tenancy-agreement at, 186, 189

RAILWAY, lease of rolling stock of, 3

RATE.

deduction of, from rent, 231, 384, 388
statutory, 384
divided between landlord and tenant under local Act, 386
general, 384
general district, liability for, 384
new, 386

poor, 383
Rates and Taxes,

action by landlord for, 396 construction of agreements as to, 386, 389 deduction of, 383 demand for, not necessary, 396 express agreement as to, 385 liability for, 382 present and future, 395

RATING,

of house let in tenements, 384 of owners, 383, 384, 385 of plantations and mines, 383 where part of house occupied by owner, 384

RATIFICATION.

of contract made on behalf of corporation, 22 of lease by infant, 8

REAL ESTATE,

meaning of, in Part I. of Land Transfer Act, 1897...61 vests in personal representatives, 450

REAL REPRESENTATIVES, distress by, 254 lease by, 61, 62

when rent payable to, 223

"REASONABLE WEAR AND TEAR EXCEPTED," 155, 341, 379

RE-ASSIGNMENT,

avoidance of liability by, 440 liability of successive assignees upon, 441 to original lessee, 426 to whom it may be made, 449, 441

REBUILD,

covenant to, 156, 157, 341, 345 landlord not bound to, 334

(72)

```
RECEIPT FOR RENT,
evidence of new tenancy, 502
stamp on, 479
```

RECEIVER.

agent of mortgagor, 253 appointment of, by mortgagee, 252 distress by, 253

when appointed by Court, 253
appointed under Conveyancing Act, 253
goods in possession of, not privileged from distress, 262
guardian in the nature of, 9
lease by, when appointed by Court, 72
liability of, for illegal distress, 253

not liable to head-lessor for rent or outgoings, 416 notice to quit by, 476 payment of rent to, 243 public-house licences, of, 364

RECITALS,

may constitute covenants, 153 when inserted in lease, 131

RECOVERY OF LAND, action for, 574. See LAND.

rent, 72

RECTIFICATION OF LEASE, 192

REDDENDUM, 150, 203

RE-ENTRY.

demand of rent before, 497. See DEMAND.
how affected by Conveyancing Acts, 504
not necessary for forfeiture, 498
notice before, 214, 506
proviso for, 168, 214. See Proviso for Re-entry.
right of.

against company, 328, 499
for a condition broken is not assignable, 169
not dependent on reversion, 169
to whom reserved, 169
void for want of statutory notice, 506

REFRESHMENT STALL at exhibition, rights of holder of, 86

REGISTRATION,

"assurance," capable of, 430 of assignment,

in register county, 185, 422 under Land Transfer Acts, 186, 430

of further charge, 430 of lease, 185-187

in register county, 65, 183, 185, 186 of lands in Bedford Level, 186 under Land Transfer Acts, 186 of writ of elegit, 70

/ 20

INDEX:

```
REGISTRATION—continued.
    priority under, 430
    title to leasehold land, of, 186, 187
RELATION of landlord and tenant, requisites to, 78
RE-LETTING.
    avoidance of lease by, 487, 490, 499
Relief against Forfeiture, 169, 212, 214, 215, 503-511
    in equity, 504, 510
    of head-lease, 505
    on non-payment of rent, 510
    on other breaches, 510
    right to, is a chose in action, saleable by trustee in bankruptcy,
    under Conveyancing Acts, 169, 504
        application for, 505, 506, 508
        cases excluded, 212, 509
        compensation, 505, 507, 508
        discretion of Court, 505, 506
        head-leases, 505
        mining leases, in cases of, 212, 509
                 licences, in cases of, 214, 509
        notice to remedy breach, 504, 506, 507
        terms of relief, 505, 508
        when granted, 505, 508
         when lessee must apply, 508
REMAINDERMAN,
    agreement by tenant for life enforced against, 55, 111
    effect of acceptance of rent by, 54, 55
             part performance of tenant for life's parol agreement.
               55
    entitled to enforce valid contract by tenant for life, 56
    when bound by covenant or contract of tenant for life, 55, 56
REMEDIES for breach of agreement, 115
REMOVAL.
    of farm buildings, by tenant, 522
    of fixtures, 517, 523, 526, 529
        on surrender, 492, 493, 527
    of goods under execution, 316, 317
    of produce from farm, 371
    of trade buildings, &c., by trustee in bankruptcy, 457
    of trees, 380
REMUNERATION ORDER, 189
RENEWAL OF LEASE, 5, 9
    contract for, 113
    costs of, 168
    covenant for, 159, 166-168, 418
        construction of, 159, 167
             by trustees, 58
             under power, 54
```

· INDEX.

```
RENEWAL OF LEASE-continued.
    covenant for-continued.
        on payment of money, 168
        on performance of covenants, 168
        perpetual, 166, 167
        runs with the land, 436
    duration of renewed lease, 168
    fires on, 11
    in name of trustee, 73
    leaning against perpetual, 167
    notice of intention of, 167
    option of, 419
    performance of covenants, when condition precedent to, 159,
         168
    premium on, 11
    sub-lessor's covenant to do his utmost to procure, 114, 418
    surrender for purpose of, 493
    to co-owner with infant, 73, 74. And see Infants, Married
         WOMAN, LUNATIC, ECCLESIASTICAL CORPORATIONS.
Rent. 217-332
    acceptance of, 7, 8, 23, 54
    action for, 329
         eviction a defence to, 236
         non-repair by landlord no defence to, 236
         not excluded by distress, 329
                         new lease, 329
         suspended during distress, 329
         where lease by deed, 330
                     not by deed, 330
    additional, for improvements, 219
                   violation of provisions of lease, 227, 372
         when construed as penalty, 227
    agreement to take interest on arrears of, 242
    amount payable, 227
         certainty of, 151
         "net rent," meaning of, 152
         reduced, 228
         varying with price of wheat, 152
    ancient, 25
    apportionment of, 238. See Apportionment of Rent.
    arrear, when in, 249, 498
    arrears,
         interest on, 242, 331
         limitation on recovery of, 278
             in agricultural holdings, 279
         right to, on death of lessor, 450
    assignment of, 226
    attachment of, under garnishee order, 226
    best, 43, 50, 66, 70, 194
    claimed as damages, 8
                              75 )
```

L.T.

UU

```
RENT-continued.
    corn, 217, 387
    dead, 203
    deductions from, 229, 418. See DEDUCTIONS FROM RENT.
    definition of, in Settled Land Act, 1882...196
    demand of, 221
        before distress, 283
        "lawfully demanded," 278
    different kinds of, in mining leases, 204
    distress for, 150. See DISTRESS.
    double, 568
    due out of every part of land, 150
    fire, in cases of, 235
    fixed, 248
    forehand, 222
    guarantee of, 179, 331
    in respect of which ad valorem stamp duty is payable,
    increased, 227, 248, 372. See Additional Rent.
    is an incident of, lessee's estate, 10
    minimum, 194, 203
    mining, 50, 194, 195. And see MINING LEASE.
    non-payment of, relief from forfeiture on, 510
    payable,
        in advance, 151, 220, 221, 241, 328, 330
             by custom, 221
             distress for, 249
             "if required," distress for, 249
        notwithstanding destruction of premises, 235
                             by fire, 235
                                flood or enemy, 235
                          non-repair by landlord, 236
                          premises unfit for use or habitation, 235
                          user of premises made illegal, 235
        to whom, 223
             after assignment, 226
            on intestacy, 223
            to real representative, 223
        when, 220 222
         where, 223
             on lease by sovereign, 223
    payment of,
        after assignment of reversion, 226
        before rent day, effect of, 222
        by corporation, effect of, 95
           lessee of tithes, 235
           lodger, 234
           mistake, 226
           post, 242
           stranger, 324
           tenant holding over, 95
                            (76)
```

```
RENT-continued.
    payment of-continued.
         by underlessee, 415, 418
         compulsory, 252, 418
         covenant for, 150, 153
             implied, 151
             lessee liable upon, after assigning lease, 153
         evidence of attornment, 243
                     title, 243
         first payment, when due, 151
         how made,
              bill of exchange, effect of taking, 242
              by cheque, 243
         in cases of intestacy, 223
         lodger, by, 268
         on the rent-day, 223
         tenancy from year to year, when created by, 81, 94-96
         time for, 151
             construction of stipulations as to, 221
         to agent, 224, 243, 244
            grantor after grant of reversion, 226
            lessor after mortgage of reversion, 223
            mortgagee, 224, 225, 251, 252
            mortgagor, 224, 251, 252
            one of co-owners, 225, 226
            person not entitled, 226
            receiver, 243, 252
            third person, authority for, 226, 253
    payments which are not rent, 214, 218-220
               "over and above" rent, 220
     penal, 249
     peppercorn, 53
    properly so called, 214, 218-220, 247
     proviso for re-entry on non-payment of, 173, 214
     rack-rent, 186
     recovery of,
         after ejectment for forfeiture, 236
         effect of landlord's entry on, 237
         when paid to mortgagor, 224
    remedies for recovery of,
         action, 244
         agreement to suspend, 242
         distress, 244. See DISTRESS.
         on bankruptcy of tenant, 323
            execution against tenant, 316
            winding-up, 326
    remittance of, by post, 242
    representation as to person entitled to receive, 226
    reservation of, 150, 217
         additional, 219, 227
         by way of royalty, 203, 218
```

(77)

RENT-continued.

```
reservation of continued.
         in lease by tenant for life, 43
         mode of, 150, 152, 217, 218
         of several rents, 150
         on assignment, 250
         out of what property reserved, 150
         to whom to be reserved, 152
             to a stranger, effect of, 152, 220
         what may be reserved, 217, 218
              need not be money, 217
    royalty may be, 204
    set-off against, 228, 229
    specialty debt, is equal to, 242
    specific performance with abatement of, 116
    Statute of Limitations as to, 331
    suspension of payment of, 153, 156, 235, 242
        on destruction by fire, 235
            distress, 244
            eviction, 236
         provision for, 235
    tender of, on distress,
        before seizure, 278, 283
        to whom to be made, 278
    tender of, to agent, 224
    valuation, to be fixed by, 79
    wayleave, 204, 205
RENT-CHARGE,
    liability of tenant for years for, 331
    within what time recoverable, 279, 331
RENT-SERVICE distinguished from rent-charge, 238
REPAIR.
    agreement by landlord to, allow a sum laid out by tenant in,
                            to, its effect on tenant's liability, 334,
                               335, 337
    at joint expense of lessor and lessee, 345
    effect of express agreement for, 333
    breach of covenant to, 337, 531
         action for, 347
         continuing breach, 338, 503
         liability of assignee to lessee for, 443
         measure of damages for, 346
             after expiration of term, 347
             during currency of term, 346, 443
    breach of covenant to keep in, 338
    by mesne lessee, 342
    commencement of lessee's liability for, 343
    common staircase, of, 334
    contribution by tenant in common to expenses of, 333
```

```
REPAIR—continued.
    corenant to.
        by lessor, 342, 344-346
        conditional, 342, 343
        construction of general, 336, 337
                        special, 344, 345
        no direct specific enforcement of, 346, 373
        on notice, 341, 449
        to do "necessary" repairs, 337
        to well and substantially repair, 339, 344
         to what things covenant extends, 336, 340
         where premises burnt down, 337
    covenant to keep in repair, construction of, 338, 339
                         tenantable repair, 340
                 keep and leave in repair, 339, 340, 344
                 leave in repair, notice not required, 342
                 put into repair, 337, 338
                 vield up in repair, 339, 341, 344, 529
    drains and sewers, of, 336, 339, 345
    effect of lessor doing repair himself, 342, 346
    entry by landlord to, 345, 346
    execution of, to satisfaction of surveyor, 343
    existing buildings, of, 340
    fences, of, 375
    fixtures, of, 341, 531
    liability of underlessee to underlessor for, 346, 417
             to stranger for accident due to want of, 335
    notice to lessor of want of, 345
    obligation of landlord, 333
                 tenant for years or life, 333
                        from year to year, 332
         effect of express agreement, 334
    of old premises, 836
    parol promise to, 129
    question of fact, 337
    "reasonable wear and tear excepted," 341
    recovery of rent during, 347
    right to take materials for, 343, 349, 378
    supply of timber for, 342
    tenement house, of, 334
    where landlord occupies part of premises, 334
REPAIRING LEASES.
    granted by tenant for life, 46
             under power, 52
    of trust property, 58
    under Settled Estates Act, 1877...50
REPLEVIN, 278, 307, 308
    action of, in County Court, 310
```

in High Court, 310 is personal, 309

79

```
REPLEVIN-continued.
    action of-continued.
              new trial in, 312
              removal to High Court of, 312
              where title in question, 310
              who may bring, 309
    appeal from County Court in, 312
    bond in.
        amount recoverable on, 309, 310
        approval of, by County Court registrar, 309, 310
        condition of, 310
            how broken, 311
        form of, 310
    damages in, 309
    effect of, 308
    extension of time for, 301, 302
    nature of, 308
    notice of, 309
    proceedings in, 309
    sureties in, 311
        discharge of, 310
    time for, 301, 302
    warrant in, issue and execution of, 311, 312
    when it lies, 308
          distress must be wrongful, 308
REPRESENTATION,
    as to state of premises, 130, 355
    by infant lessee that he is of full age, 10
REPUTED OWNERSHIP OF LESSEE, trade fixtures not within, 531
RESCISSION.
    of contract, parol evidence to prove, 121
       lease, 192
RESCUE OF GOODS DISTRAINED, 271, 307
    remedy, 271, 290, 294, 307
    when lawful, 295, 308
RESERVATION, 141-145
    construction of, 141, 143
    distinguished from exception, 141
    implied, of easement, 139, 142
     in derogation of grant, 140
     in mining leases, 203
     nature of, 141
     of incorporeal rights, effect of, 141
                           mode of, 142
     of game, 406, 408
     of rent, 150. See RENT.
     of right of entry, 408
                hunting, shooting, &c., 410
                             (80)
```

```
RESERVATION—continued.
   · of right to work minerals, 144, 145
    separate, 179
    void for uncertainty, 142
RESIDENTIAL FLATS, 439
RESTRAINT OF TRADE, covenant in, 357
RESTRICTIONS,
    arising from disability, 3
                 limited interest, 40
RESTRICTIVE COVENANTS, 367, 416, 417, 437, 439
RESUMPTION OF POSSESSION,
    provisions for, 174
    under Agricultural Holding Act, 474
REVERSION, 444, 448
    action by assignee of, 444, 445
    assignment of, by operation of law, 256
     by estoppel, 415
     grant of, 444, 496
         effect on tenancy at will, 464
         grantee may avail himself of notice to quit given by
           predecessor in title, 475
         liability of lessor after, 446
         notice of, 226, 444
         remedies of grantees, 365, 444, 445
                     lessees, 445
     injury to, by waste, 350, 353
     lease in. 191, 236, 239
     legal, 251
     meaning of, in 32 Hen. 8, c. 34, 446
     on sub-lease merged in fee, 485
     purchaser of, 446
     rent follows, 152
     severance of, 238, 448
         effect on covenants and conditions, 238, 448, 449
                  lease by joint tenants, 255, 256
     title to, 113, 114
     what is sufficient to support a distress, 251, 252
     when surrendered or merged, next vested estate to be deemed
       reversion, 250, 493
     where covenants run with, 160, 161, 365, 444, 449
 REVERSIONARY ESTATE,
     rent and benefit of covenants go with, 448
     severance of, 448, 449
 REVOCATION of licence, 87, 88
 RIGHT OF COMMON, lease of, 125
 RIGHT OF ENTRY, 190, 191, 328, 342, 498, 570
     when barred, 570
```

(81)

RIGHT OF SPORTING, lease of, 126, 403

RIGHT OF WAY,

lease of, 125

uncertainty as to, 128

ROLLING STOCK, leases of. 3

ROOMS IN A HOUSE,

lease of, 134

rent of part of a room, 152, 218, 219

ROYALTY, 151, 203, 212. And see MINING LEASE.

RUNNING WITH LAND, covenants, 431, 433-438, 442, 446, 450

SAINTS' DAYS, according to new style, 128

SALE,

of lease, contract for, 426

rights as to title on, 427

under distress, 295, 301. See DISTRESS.

Sanitary Authority may acquire and let land for allotments, 34, 35

SCALE FEE.

in case of lease at premium, 190

when applicable, 189

SCHEME.

for letting charity property, 38 leasing powers in, 37

rouning powers

School,

whether a business, 357

an offensive business, 361

SCHOOL HOUSE, assurance of land for, 36

SEAL,

corporation, of, 182

instruments not under, 79

licence under, 37

on execution of lease, 182

SEIZURE

of goods under distress, how made, 285, 286 requisites to, 285, 286. See DISTRESS.

SERVANT,

occupation by, 88

service of notice to quit upon, 477

SERVICE.

of notice of distress, 249

to quit, 477

remedy breach, 507

given by landlord, 477

tenant, 478

82

```
SET-OFF.
    against bankruptcy trustee, 457
    against rent, 228, 233
                 general rule, 228
                 in action for rent, 229
                 pleading, 229, 234
SETTLED ESTATE,
    entitled to benefit of damages, 161
    leases of, 41, 48
             by husbands entitled in right of wives, 16, 17.
                lunatics, 13
                married women, 14, 17, 18
                tenants for life, 41. And see LIFE, TENANT FOR.
"SETTLED LAND," 41, 47
SETTLEMENT by way of trust for sale, 47
SEVERANCE,
    of reversion, 238, 255, 448. See REVERSION.
       tenements, implied grant of easement on, 139
SEWERS, repair of, 339
SEWERS RATE,
    deduction of, from rent, 231, 383, 387
    tenant liable to pay, under reservation of net rent, 152
SEWING MACHINES exempt from distress, 265
SHERIFF.
    action by landlord against, 319, 320
    duty of, on execution against tenant, 317, 318
    liability of, where claim for rent, 319
    may dispose of produce subject to agreement to expend it on
      land, 263, 374
    not to sell clover or artificial grass growing under standing
      corn, 369
    not to sell off straw, turnips, or manure in any case, or hay.
      &c., contrary to covenants, 373
    notice to, of covenants against removal of produce, 374
    possession of, must be continuous to prevent distress, 262
    sale of produce by, 263, 373
    to send notice by post to landlord and his agent, stating that
      produce has been seized, 374
    undertaking by, to pay one year's rent, 320
SHIP, distress on, 260
SHOOTING AND SPORTING,
    agreement for lease of right of, 106
    leases of rights of, 2, 126
Shop, breach of covenant by conversion of premises into, 363, 366, 367
"SHORTS" CLAUSE in mining leases, 205
SIGNATURE.
    of memorandum, 110
    whether essential to lease, 182, 183
                                83 )
```

```
SMALL HOLDINGS, 43
SMALL TENEMENTS,
    recovery of possession of, before justices, 578
                              in County Court, 577
SOLICITOR.
    costs of lessor's and lessee's, 188, 189
    delivery to, of escrow, 183
    lease to, by client, 73
    liable in damages for wrongful distress, 253
    undertaking to pay rent, 298
Sovereign, leases by infant, 6
SPECIAL INDORSEMENT in action to recover land, 574
SPECIFIC PERFORMANCE.
    action for, 116
        defences to, 116-120
             delay, 120
             fraud or misrepresentation, 119
             hardship or unfairness, 119
             incompleteness, 117
             mistake, 120
             misunderstanding, 120
             uncertainty, 115, 118
             want of mutuality, 117, 118
    agreement for lease, of, 116, 117, 125, 414, 482
               by tenant for life for lease under power, of, 56
                to work collieries, of, 210
    building agreement, of, 116, 119
    contract for assignment, of, 423, 424
    damages in lieu of, or in addition to, 121, 122
    discretionary, 116
    distinguished from other specific relief, 122
    effect of agreement to let capable of, coupled with possession
         given and taken, 81, 82, 247
    jurisdiction of County Court in, 82, 111, 116
    of rectified contract, 120
    parol agreement, of, 111
    parol variation, with, 120
    part performance, in cases of, 111, 119
    plaintiff's conduct in relation to, 119
    when ordered, 116, 117
          against executors, 121, 452
                  remainderman, 111
                  trustee in bankruptcy, 121
          not against bankrupt personally, 121
                      infant, or by infant, 118
              of covenant to repair, 346
    where intended lessee has committed breaches, 509
    with abatement of rent, 116
                             (84)
```

SPECIFIC RELIEF on executed contracts, 122 SPIRITUAL CORPORATION, lease by, 24. And see Ecclesiastical CORPORATIONS. SPORTING. construction of covenant for quiet enjoyment in lease of exclusive right of, 403 covenant in lease of, 446 demise or reservation of right of, 410 rights, injunction against interference with, 122 notice to determine, 466 grant of leave to hunt over premises, 410 special agreements relating to, 411 STAMP, actual consideration determines, 178 adhesive stamp, where duty may be denoted by, 175, 176, 179 agreement for sale subject to yearly tenancy, on, 180 denoting, 182 effect of misstatement of consideration, 178 non-stamping, 180 ruling in favour of sufficiency of, 180 facts showing liability for, to be set forth, 178 fresh, where necessitated by alterations, 184 insufficiency of, 180 mere proposal, in cases of, 122 on acceptance in writing of verbal offer, 122 agreements, 122, 123 appraisements, 301 assignments, 428 authority to distrain, 281 counterparts, 123, 180 duplicates, 180 leases, 132 amount of, 175 made after and in conformity with stamped agreement, 123, 177 scale, 175, 176 when chargeable, 175, 176 where contract for sale of fixtures, 179 letting of different properties, 178 option of purchase, 179 stranger covenants for rent, 179 guarantees penalties, 179 memorandum indorsed on lease, 184 mining leases, 212 minutes of terms of letting, 123 receipt for rent, 479 replevin bond, 310

sale of lease, 428

undertaking for continuance of distress, 306 85 (

)

STAMP-continued.

on surrender, 485
penalty for non-stamping, 180
special provisions as to amount of, 177

stamping after due date, 180

where agreement approved by solicitors, but not signed, 123 instrument relates to distinct matters, 178

STATUTE OF FRAUDS,

time for, 179

agreement to pay additional rent, 220 collateral parol agreement not within, 107 contract for assignment, 426 description of parties, 109 does not prevent proof of fraud, 120 fourth section of, 105, 129, 426 enforcement of contract by party who has not signed it, 118 exceptions from, 106 how a case may be taken out of, 105 lease by deed not within, 124 parol leases, as to, 124 requires memorandum to be signed only by party to be charged, 104, 110 signature of memorandum by agent, 110 third section of, as to assignments, 428 as to surrenders, 486, 489

STATUTE OF LIMITATIONS, 331, 332, 570
acknowledgment, operation of, 573, 574
adverse title by receipt of rent, 573
as to recovery of rent, 331
bar to right of entry or action, 570
in case of tenancy at will, 570
for term, 572
from year to year, 571

lessee cannot claim title during currency of lease, 573 surrender, effect of, 573 title under, 570, 572, 573 trespasser, 573

STATUTES CITED. See TABLE OF STATUTES, p. xcix

STATUTORY POWER, land taken under, 447

STEWARD,

entry by, whether sufficient memorandum in writing, 110 power of, to lease, 70

STRANGER,

action to recover land by, 576 adverse title of, 573 liability to, for accident due to want of repair, 335 paying off distress, 324

STRANGER'S GOODS, distress upon, 245, 246, 249, 257, 288, 294 removal of, to avoid distress, 274

STRAW, construction of agreements relating to, 371

SUB-DEMISE, mortgage by, 416, 421

SUBLEASE.

effect on, of holding over by mesne tenant, 95 merger of reversion on, 250. And see Underlease.

SUBLESSEE, 113, 364. And see Underlessee.

SUBLESSOR,

breach of covenant for quiet enjoyment by, 403 covenanting to do his utmost to procure renewal, 115 indemnify sublessee against head-rent, 159

SUBLETTING, restraint on, 115

SUBROGATION, right of, in insurance, 382

SUBSIDENCE,

damages for, 200, 210 due to excavation made before lease, 200

SUB-TERM, 114

"SUFFER TO BE DONE," 364

Sufference, Tenancy by,
admission of, 175
carries no right to assign, 419
determination of, 462
effect on, of assent by owner, 90
payment of rent, 91
not against Crown, 91
tenant cannot underlet, 413
what is, 90
instances of, 90

" SUMMEBLEAZES," 406

Supplies, agreement for taking, 366

Support, implied reservation of easement of, 142

SURETY FOR RENT, how discharged, 457 not entitled to distrain, 250 original lessee, 441

SURFACE.

lease of, 2, 42 mining lease of, apart from minerals, 196, 197 right to let down, 200, 203 support of, 200

(87)

```
SURBENDER OF TERM.
     by operation of law, 487, 488
     cancelling of lease, 491
     Crown lands, in, 31
     effect of, on covenants, 493
                 right of distress, 250
                          entry (Statute of Limitations), 573
                       to remove fixtures, 492, 493
                 rights of third parties, 492
                 underlessees, 493
              when followed by voidable lease, 487
     express, 485
              must be by deed or writing, 486, 487
              to leasehold reversioner, 485, 486
                legal tenant for life, 486
     for purpose of renewal, valid without surrender of underlease,
     how it differs from a forfeiture, 492
     implied, 487
         acts which may constitute.
              acceptance of new lease or tenancy, 487, 490
                                tenant, 487, 490
         attornment, 490
         creation of relation inconsistent with tenancy, 487, 491
         delivery of possession, 487, 490
         exchange between two tenants, 491
     of leases under Settled Estate Act, 1877...50
       mesne lease, effect on right of distress, 250
       mining lease under Settled Land Acts, 195
    operation of, 492
   recovery of rent after, 492
    removal of fixtures on, 527
    retention of lease by lessee on, 187, 489
    stamp duty on, 485
    to tenant for life, 45
    validity of, 5
Surveyor, charges of lessor's, 189
SUSPENSION OF RENT.
    on distress, 244
       eviction from part of premises, 286
TAIL, TENANT IN,
    lease by, 40, 41
             after possibility of issue extinct, 48
             lunatic, 11
             voidable when not under statute, 55
TAXATION, third party order for, 188
TAXES,
    agreements relating to property tax, 385
    construction of agreements as to, 386, 389
                                88 )
```

TAXES—continued. express agreements as to, 385 fresh, 388 liability to pay, where there is no express agreement, 382 taxes which fall on landlord, 385, 386 parliamentary, 386, 387 TECHNICAL TERMS, parol evidence to explain, 128 TELEPHONE, agreement for use of, 176 TENANCY. creation of, 2 determination of, 462 different kinds of, 90 at will, 91-93. And see WILL, TENANCY AT. by sufference, 90. And see Sufference, Tenancy by. durante viduitate, 532 for life, 100 a term of years, 99, 100, 481 from year to year, 93-97. And see YEAR TO YEAR, TENANCY FROM. TENANT, estopped from disputing landlord's title, 75 estoppel in favour of, 75, 76 TENANT FOR LIFE, 4, 12, 17, 41-48, 111. And see LIFE, TENANT FOR. TENANT FROM YEAR TO YEAR, 93-97. And see YEAR TO YEAR, TENANCY FROM, YEAR TO YEAR, TENANT FROM. TENANT IN FEE SIMPLE, leases by, 3 TENANT IN TAIL, 11, 13, 14, 18, 40, 48, 55, 118. And see TAIL, TENANT IN. TENANT PUR AUTRE VIE, 77 TENANT RIGHT, action to enforce, 535 assignment of, 535 incidents of, 535 when it arises, 533, 535 TENANTS IN COMMON, 63, 64, 160, 333. And see Common, TENANTS IN. TENANTS' COMPENSATION ACT, 1890, object and provisions of, 560 TENDER. of amends before action for irregular distress, 316 rent, 224, 278, 498. See RENT. after impounding, 295, 298 seizure, 298, 307

before seizure, 278, 283

89)

by lodger, 299

```
TENDER—continued.
    of rent-continued.
         by owner of agisted cattle, 297
         legal, 299
         must be unconditional, 299
         on distress of growing crops, 299
         under protest, 299
TENEMENTS,
    house let in separate, 384
     meaning of, 136
    severance of, 139
TERM OF LEASE, 108, 145
    commencement of, 145, 146
         agreement must fix, 108-110
         ascertainment of, 110
         from impossible date, 146
         where no date specified, 110
TERM OF YEARS, 99
    tenancy for, 99, 481. See YEARS, TENANCY FOR.
TERMS, new, 103
THEATRE.
    lease of stalls or boxes, 2
    use of refreshment bars, 422
"THEREABOUTS," meaning of, 136
"THEREWITH USED AND ENJOYED," construction of, 138
THIRD PARTY order for taxation, 188
"THOUSAND," meaning of, by local usage, 128
TIED HOUSE,
    covenant held to be a clog, 163
    rights of lessor's assigns, 365, 366
    stipulations relating to, 363, 365
TILLAGES, compensation for, 533
TIMBER, 348, 349, 377
    custom as to, 378
    exception of, 143
    right of tenant to take for repairs, 349
    supply of, for repair, 342
    windfalls of, 378
    And see TREES.
TITHE RENT CHARGE.
    deduction of, from rent, 232, 383
    payable by owner, 232, 383, 386
TITHES,
    grant of, to owner of land, 125
    lease of, 2, 25, 52, 125
```

90)

TITLE.

evidence of, 243
failure of vendor to make, 428
implied covenant for, 397
registration of, 186, 187, 430
right of purchaser to, on sale of lease, 427
intending lessee, 113, 114
under Statute of Limitations, 570

TITLE DEEDS.

cannot be distrained, 257 the sinews of the land, 434

Tolls.

agreements for letting, 126 leases of, 2, 25 meaning of, in Settled Land Act, 1882...196

TORT, action for damages founded on, 141

TRADE,

contracts in restraint of, 163, 357
covenants against, 357
construction of, 357
offensive or noisome trades, 361
particular trades, 358

TRADE FIXTURES, 518

not in reported ownership of lessee, 531 taking of, under compulsory purchase, 520 when removable, 518, 519, 520 as against mortgagee, 520–522 by underlessee, 520

TRADE Unions, leases by and to, 36 TRANSFEE of interest in land, 426 TREES.

construction of covenants relating to, 379
distress on trees and shrubs, 257, 261
exception of, 143, 349, 380
excepted, lessee's liability to protect, 349
lessee's right to fell, for working mines or repairs, 211, 378
property in, as between landlord and tenant, 377
landlord and third person, 378

bushes, 378
windfalls of trees, 378
removal of, 144, 380, 519
waste by cutting down, 348, 349, 378
what are timber, 348, 377, 378. And see Timbers.

TRESPASS, ACTION OF, arrears of rent claimed as damages in, 8 for unlawful entry, 284 only maintainable after entry, 192

TRESPASSER, acquisition of title by, 573

L.T. (91)

x x

```
TRUST FOR SALE, lease of land settled on, 47
TRUSTEE IN BANKRUPTCY,
    lease by or to, 73, 74
    may disclaim lease, 455. See BANKRUPTCY, DISCLAIMER.
         dispose of lease, notwithstanding proviso or covenant
           against assignment, 421
    re-assignment by, 440
    what property vests in, 454, 455. And see BANKBUPTCY.
TRUSTEES.
    accepting lease on behalf of club, 59
    appointment of, for purposes of Settled Land Acts, 44
    breach of trust by, 58
    constructive, 74
    lease by, 57
         all must join in, 58
         mining, 58
         improper, to lessee with notice, set aside, 58
         of properties held on separate trusts, 58
         repairing, 58
         with option of purchase, 58
              right of renewal, 58
     lease to.
         by cestui que trust, 73
         indemnification against liability under covenants, 59
         liability of trustee to lessor, 58, 59
     liability of, as assignees of term, 432
    notice to, of lease by tenant for life, 44
    renewal of lease in name of, 73
TRUSTEES OF CHARITIES, leases by and to, 37-39
TRUSTEES FOR SALE, lease by, 58
UNCERTAIN INTEREST.
     continuance of tenancy where landlord entitled for, 532
     right to emblements in cases of, 531
UNCERTAINTY,
     a defence to action for specific performance, 118
     written instrument void for, 149, 150
UNDERLEASE, 412-418
     agreement for, 114, 413
         rights under, 417
         subject to head-lessor's approval, 41-4
    by executor or administrator, 60
    covenant by husband to grant, 20
    covenants to be inserted in, 414
    covenant to repair in, 417
         damages on, 417
         when it is a covenant of indemnity, 417
    distinguished from assignment, 413, 414
    from assignee of lease, 416
                                92 )
```

```
UNDERLEASE-continued.
      of wife's lessehold property, 20
      provision against assigning in, 413
      renewal of, 166, 418
      sale of, as lease, 427, 428
      surrender of, not necessary on surrender of original lease for
        purpose of renewal, 498
      what constitutes, 414, 415
 Underlessee.
     acceptance of, as tenant, 491
     advertising for, 414
     breach of covenant by, 364, 367
     deduction from rent by, of payments to lessor, 418
     duty of, to examine head lease, 114
     effect of holding over by, 566
     forfeiture as against, 417, 495, 505
     implied agreement by his landlord to protect him from superior
       landlord's distress, 398
     injunction against, 416
     is not servant or agent of underlessor, 364
     liability of,
          for repairs, 346, 417
          of underlessees inter se, 418
         to lessor, 415
              for rent, 415, 416
              in equity, 440
              on covenants in lease, 416
         to underlessor, 346, 416, 417
     may take emblements, 532
     not affected by surrender, 493
     notice to, of covenants in lease, 346, 416
    recovery by, of compensation for misdescription of term, 114,
       115
    relief of, against forfeiture, 505
    repudiation by intending, 115
    when bound by covenants in lease, 416
         And see Sub-Lesses.
UNDERLET.
    contract to, for forbidden purpose, 414
    covenants relating to underletting, 413, 414, 510, 511
              breach of, 413, 414, 510, 511
              construction of, 413
              forfeiture for breach of, 510, 511
    lessee forbidden to underlet without consent, 413
    right to, 412
Undivided moiety of mineral property, agreement to let, 117
Universities, leases by, 30
UNLAWFUL PURPOSE, lease for, 354
Unopened mines or quarries, 211, 212
                               93
```

USAGE, 369. See CUSTOM.

Use and Occupation, contract for, 235 of premises unfit for habitation, 235

Use and Occupation, Action for, 227, 236, 247, 248
against executor, 452, 453
against person in possession under contract of sale, 92
damages in, 330
entry necessary for, 192, 330
for increased rent, 252
when it lies, 247, 248, 330
when tenant enters under parol agreement, but does not occupy for whole of term, 106, 330.
where written agreement, 330

USE OF PREMISES.

covenants as to, 357, 359
continuing breach of, 358
enforcement of, 357, 366
permitting, for competitive business, 359
user by lessor, 359
for unlawful or immoral purpose, 353, 354
when waste, 348

USUAL COVENANTS, 114, 154-157, 168
covenants held not to be, 154, 156, 157
in lease of public house, 154
what are, 154, 155, 206
for quiet enjoyment, 155
how determined, 154, 155, 157
provision for lessor to view state of repair, 155, 206
to keep and deliver up in repair, 155
pay rent and taxes, 155

USUAL PROVISIONS in mining leases, 206, 207

VALUATION

as a condition precedent, 159, 536 of away-going crops, 535 rent to be fixed by, 79

Variance between lease and counterpart, 181

Variation, parol, 106, 227

VENDOR of lease, disclosure by, 427

VESTING ORDER.

jurisdiction to decide question of merger on application for, 459

on disclaimer, 459

liability under, 459, 460

(94

```
Void,
    construed to mean "voidable," 214
    contract as to taxes, &c., 385, 386
    lease by charity trustees, 36
          by or to corporation, 22, 23, 26
          effect of payment of rent under, 26
          incapable of confirmation, 49, 54
         lessee being an infant, 10
         lessor being an infant, 6
          of married woman's freeholds, 19
    proviso that term shall become or be, 496
VOIDABLE LEASE.
    confirmation of, 7, 8, 19
    by or to corporation, 23
    by tenant for life, 48
    granted by infant, 6, 8
    of married woman's freeholds, 19
WAIVER.
    of a breach of covenant, 503
    of disclaimer, 501
    of double value, 568
    of forfeiture, 499
         acts amounting to, 500
             action for rent, 501
             advice by landlord, after forfeiture, to purchase
               interest of lessee, 496
             agreement for new subsequent term, 502
             demand of rent, 501
             distress, 501
             notice to repair, 502
             receipt of rent due since forfeiture, 381, 500, 502
             recital of existence of tenancy, 502
             where breach of covenant causing forfeiture is con-
               tinuous, 501, 502, 503
         effect of, 342
    of notice of disclaimer by lessor, 10
              of intention to lease, 44
    of notice to quit, 479, 543
         by acceptance of rent, 479
         by demand of rent, 480
         by distress, 479
         by holding over, 480
         by second notice to quit, 479
         consent of both parties requisite to withdrawal of notice
           to quit, 480
    of right of action for excessive distress, 305
    of want of mutuality, 118
    statutory restriction of effect of, 508
"WALKING POSSESSION," 307
```

95

x x*

```
WALL, ownership of, 377
WARD, lease by, to guardian, 73
WARRANT.
    for recovery of possession, 580
           liability for proceeding under, 581
    of distress, 281
        express indemnity to bailiff, 282
        implied indemnity to bailiff, 282
    to replevy, 311
WARRANTY.
    how executed, 355
    verbal, 130
WARREN.
    effect of grant of, 135
    lease of, 126
WASTE, 211, 348-353
    action for, 352
        damages in, 352
    injunction against, 350, 353
    in relation to mines, 211
    kinds of,
        equitable, 348
        meliorating, 350
        permissive, 333, 348, 351
        voluntary, 348
             by acts of destruction, 348
                cutting down trees, 348, 349, 378
                opening mines or quarries, 27, 211, 212
             by changing nature or alteration of demised premises,
                  349, 350
                taking away fixtures, 517, 518
    lease without impeachment of, 348
    liability of lessee for, 351, 352
               yearly tenant for, 333
    only of thing demised, 349
    proviso for re-entry on commission of, 174
    tenancy at will determined by, 351, 464
WASTE LAND, strip of, included in demise, 134
WASTES, approvement and letting of, 3
WATER, meaning of, in grant, 135
WATERCOURSE, exception of, 142
WAY, RIGHT OF,
    cannot be acquired by prescription by tenant against tenant,
   grant or reservation of, 138, 140
        implied grant, 137, 140
                            ( 96
```

```
WAY, RIGHT OF-continued.
    leases of, 125
    uncertainty as to, 128
    under what words it will pass, 137, 138
WAYLEAVE, 204, 205, 209, 445
WEEKLY TENANCY.
    claim for rent on execution, 321
    double rent, 568
    holding over, 566
    interest of tenant under, 94
    liability of landlord to repair, 334
    notice to quit, 467
        expiration of, 470
WIFE, 14-20. And see MARRIED WOMAN.
    service of notice to quit on, 477
WILL, TENANCY AT,
    creation of, 84, 91, 184
        express, 91
        implied, 84, 91
             by general or indefinite letting, 92
                holding over during treaty for new lease, 92
                occupation under agreement for lease, 91
                                  purchase agreement, 92
                                  trustee by cestui que trust, 93
                                  void lease, 92
             from permissive occupation, 91, 184
    determination of, 84, 463
        express, 463
             by landlord, 463
                tenant, 463
        implied, 464
             by assignment, 84, 420
                death of landlord or tenant, 464
                         mortgagor, 465
    distress on, 247
    reservation of rent on, 93
    under mortgagee, 84, 465
        determined by death of mortgagor, 84, 465
    yearly tenancy, when changed to, 93
WILL, TENANT AT,
    assignment by, 420
    claim of, to emblements, 531
    liability of, for waste, 352
    obligations of, as to fences, 375
    right of entry or distress against, 570
```

97

underleases by, 412

minerals, power to, 203

WIN AND WORK

WINDFALLS OF TIMBER, property in, 378 WINDING-UP. apportionment of rent in, 328 distress for rent in, 326 by mortgagee, 328 leave to distrain, 327 where goods mortgaged to debenture holders, 325 distress levied before, 328 preferential debts in, 328 proof for future rent in, 329 proviso for re-entry on, 172, 173 right of re-entry on, 328, 499 WITNESSES. attestation by, 183 lease by deed attested by two, 57 Woods and Underwoods, exception of, 143 WORKING MEN'S DWELLINGS, implied condition as to fitness, 355 leases for, 32, 33, 43 liability for repair of, 334 WEIT, in ejectment, when it may stand in place of demand and re-entry, 498, 499 WRITING, MEMORANDUM IN, 107-110. See MEMORANDUM IN WRITING. WRITTEN AGREEMENT, parol variation of, 106, 120, 126, 127 YEAR TO YEAR, TENANCY FROM, 93-97, 334 assignment of, 429 circumstances showing intention to create, 93 commencement of, in implied tenancy, 97 creation of, 94, 148 express, 94, 148 expressions creating, 148 implied, 91, 147 by acceptance of rent, 49, 54 agreement to pay yearly rent, 93, 94, 147 - attornment to mortgagee at yearly rent, 83 holding over and paying rent, 95 payment of rent by mortgagee in possession, 459 to mortgagee, 68 under agreement for lease, 81,125 determination of, 465 by disclaimer, 481 non-payment of rent, 466 notice to quit, 465. See NOTICE TO QUIT implied tenancy, 95 tenancy under void lease, 471

98)

YEAR TO YEAR, TENANCY FROM—continued. distinguished from tenancy at will, 93 presumption of, how rebutted, 95 specific performance of agreement for, 117

consistent with yearly tenancy, 97 inconsistent with, 98 of implied tenancy, 97 under corporation, 94, 95

YEAR TO YEAR, TENANT FROM, death of, 450 distress by, 255 entitled to emblements, 531 liability of, for holding over, 566 for permissive waste,

for permissive waste, 352 for voluntary waste, 333 to repair, 332 to repair fences, 375

required to give up possession on compulsory taking of the land, 98

right of entry or distress against, 571, 572 right to underlet, 412, 414

YEARS, TENANCY FOR,
determination of, 481
distinguished from tenancy from year to year, 99
forfeiture of, by verbal disclaimer, 481
may be made dependent on contingency, 99
option of further term, 100
what certainty requisite, 99

YEARS, TENANT FOR,
death of, 450
liability of, for permissive waste, 332
to repair, 333
right of entry or distress against, 572
right to underlet, 412

"YIELDING AND PAYING," implied covenant under, 151, 153

BRADBURY, AGNEW & CO. LD., PRINTERS LONDON AND TONBRIDGE

. • • • .



